Malaise, Gordon

From: O'Malley, Jim T - DWD
Sent: Wednesday, September 26, 2007 2:10 PM
To: Malaise, Gordon
Subject: FW: WORKER'S COMPENSATION "AGREED UPON BILL"

Attachments: WCD PROPOSALS TO THE WCAC-FINAL VERSION-9.24.07.doc; Management Proposals to WCA. 2007.doc

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From: O'Malley, Jim
Sent: Wednesday, September 26, 2007 1:54 PM
To: Malaise, Gordon
Subject: WORKER'S COMPENSATION "AGREED UPON BILL"

At the meeting yesterday, 9/24/07, the Worker's Compensation Advisory Council (WCAC) reached an agreement on the amendments to ch. 102, Stats. for this legislative cycle. The following amendments have been approved by the WCAC.

In addition to the following there may be two (2) more amendments to s. 102. 26 (2) Stats., related to attorney fees for attorneys representing injured employees. I will forward these to you as soon as possible if they are formally approved by the WCAC. The labor representatives on the WCAC have approved these, but the management members have not and need more time for consideration.

The attachment on the left contains the most recent version of the proposals from the Worker's Compensation Division to amend ch. 102, Stats. I have already forwarded to you for drafting the Department's proposals No. 1, 3, 4, 6, 7 and 8.

The attachment on the right contains management proposals. None of the management proposals have yet been forwarded.

WCD PROPOSALS
O THE WCAC-FINA.

Management
roposals to WCA. 2.

The WCAC has also agreed to approve the Worker's Compensation Division's proposals No. 13 & 14. These amendments relate to collection of amounts owed to the Uninsured Employers Fund (UEF) and conform with collection law for Unemployment Insurance.

13. s. 102.83 (1) (a). This amendment is to increase the length of time that liens resulting from warrants will remain in effect. Under another statutory provision the liens are in effect for 10 years. With the amendment these liens will remain in effect until paid.

14. s. 102 83 (8). This amendment is also to increase the length of time that personal liability will remain in effect for individual, joint and several liability for payments due to the UEF. The amendment will continue personal liability until payment.

The WCAC has agreed to Management proposals No. 3, 5 and 6.

3. s. 102.17 (4) & 102.66 (1). Under this amendment employers and WC insurance carriers will remain liable for medical expenses for a prosthesis (artificial member) when before the expiration of the applicable statute of limitations the employee already had the prosthesis implanted. The Work Injury Supplemental Benefit Fund (WISBF) will be liable for all other barred traumatic claims.

5. s. 102.555. This amendment applies to occupational hearing loss and not traumatic hearing

loss. Under DWD 80.25 (8) Wis. Adm. Code an employee is required to have more than a 30 decibel loss to qualify for payment of permanent partial disability (PPD). No compensation for PPD is payable for hearing losses of 30 decibels and less. PPD is the only type of indemnity payable for occupational hearing loss. Unless there is PPD payable no expenses for medical treatment, evaluation testing and hearing aids are compensable for occupational hearing loss.

6. s. 102.29 (9)? The purpose of this proposal is to provide exclusive remedy protection to both employers and employees in situations where temporary help agencies primarily engaged in the business of placing employees with other employers are involved. This proposal is in response to the case of James Warr v. QPS Companies, Inc., a decision issued by the Ct. of Appeals, Dist. 1 on 12/19/06. A citation is 2007 WI APP 14. The intention is to remedy a situation where an employer has 2 or more temporary help agencies providing employees and one temporary help agency sues the other temporary help agency. In these cases all the temporary help agencies and all employees provided by the temporary help agencies will be prohibited from making claims or maintaining actions in tort against the other temporary help agency(s) and employee(s) provided by the temporary help agencies as well as the employer who retained the temporary help agencies to provide employees.

This proposal is rather complicated and was the final thing that needed to be resolved before the WCAC reached agreement on the WC bill. The intention is to provide the exclusive remedy to cover all temporary help agencies and employees placed with an employer. The amendment is to cover temporary help agencies that are primarily engaged in the business of placing employees with employers such as Manpower and Kelly Services. The amendment will not cover loaned employee situations such as in Gansch v. Nekoosa Papers, 158 Wis. 2d 743 (1990) and Kaelber Plumbing & Heating v. LIRC, 160 Wis 2d 342 (Ct. App. 1991).

At the meeting we were asked if it was possible to draft language for this proposal. We believed that it is possible. We provided the following to the WCAC at the meeting. It was the best we could do in a few minutes.

" No employee of an employer that is injured by an employee of a temporary help agency compensated by the employer may make a claim or maintain an action in tort against the temporary help agency or the other employee. Notwithstanding s. 102.01 (2) (f), Stats., for purposes of this subsection, a temporary help agency is defined as an employer primarily engaged in the business of placing employees with other employers."

The WCAC also agreed to the following amendments:

S. 102. 11 (1). The WCAC agreed to increase the maximum permanent partial disability (PPD) rate for injuries in 2008 & 2009 by approving a $10 increase for each of the next two (2) years. The maximum rate for injuries occurring in 2008 will be $272 per week and $282 for injuries in 2009. In drafting this please keep in mind that the bill may not be effective on 1/1/08 so use the revisor insert for the effective date. For the 2009 increase use the effective date for injuries on or after 1/1/09 but do not use an ending date because the next WC bill may not be effective on 1/1/10.

S. 102.32 (1), (3) & (6m). The WICCA agreed to reduce the interest credit from 7% to 5%.

S. 102.44 (1). The WCAC agreed to increase supplemental benefits by moving forward by six (6) years. This will include injury dates occurring from 1987 thru 1992. The maximum weekly benefit rate will increase from $ 338 to $450.

I have not yet had enough time to review the draft of the earlier proposals that you completed. I will try to carefully review that in the next couple of days.

Let me know if you have any questions. Thank you for your help.

WORKER'S COMPENSATION DIVISION
PROPOSED STATUTORY AND REGULATORY CHANGES 2007-2008
Updated 9/24/07

	SECTION	TOPIC	PROPOSAL	RATIONALE	STATUS
1.	**102.16(2m) (g)**	Medical treatment guidelines	Amend §102.16(2m)(g)as follows: (g) The department shall promulgate rules establishing procedures and requirements for the necessity of treatment dispute resolution process under this subsection, including rules setting the fees under par. (f) and rules establishing standards for determining the necessity of treatment provided to an injured employee. ~~The rules establishing those standards shall, to the greatest extent possible, be consistent with Minnesota rules 5221.6010 to 5221.8900, as amended to January 1, 2006.~~ Before the department may amend the rules establishing those standards, the department shall establish an advisory committee under s. 227.13 composed of health care providers providing treatment under s. 102.42 to advise the department and the council on worker's compensation on amending those rules.	This amendment deletes reference to the Minnesota Rules. The reference to the Minnesota Rules in the original statute is no longer necessary.	2/1/07 introduced at WCAC meeting. 4/5/07 approved by WCAC.
2.	**102.29(1)**	Third Party proceeds	Amend §102.29(1) as follows: **(1)** The making of a claim for compensation against an employer or compensation insurer for the injury or death of an employee shall not affect the right of the employee, the employee's personal representative, or other person entitled to bring action, to make claim or maintain an action in tort against any other party for such injury or death, hereinafter referred to as a 3rd party; nor shall the making of a claim by any such person against a 3rd party for damages by reason of an injury to which ss. 102.03 to ~~102.64~~ 102.66 are applicable, or the adjustment of any such claim, affect the right of the injured employee or the employee's dependents to recover compensation. The employer or compensation insurer who shall have paid or is obligated to pay a lawful claim under this chapter shall have the same right to make	This amendment provides that the Work Injury Supplemental Benefit Fund shares in any third party settlement proceeds. Currently the WISBF is not reimbursed in a third party suit.	2/1/07 introduced at WCAC meeting. 4/5/07 Tabled

			claim or maintain an action in tort against any other party for such injury or death. If the department pays or is obligated to pay a claim under ss. 102.81 (1) or 102.66, the department shall also have the right to maintain an action in tort against any other party for the employee's injury or death. However, each shall give to the other reasonable notice and opportunity to join in the making of such claim or the instituting of an action and to be represented by counsel. If a party entitled to notice cannot be found, the department shall become the agent of such party for the giving of a notice as required in this subsection and the notice, when given to the department, shall include an affidavit setting forth the facts, including the steps taken to locate such party. Each shall have an equal voice in the prosecution of said claim, and any disputes arising shall be passed upon by the court before whom the case is pending, and if no action is pending, then by a court of record or by the department. If notice is given as provided in this subsection, the liability of the tort-feasor shall be determined as to all parties having a right to make claim, and irrespective of whether or not all parties join in prosecuting such claim, the proceeds of such claim shall be divided as follows: After deducting the reasonable cost of collection, one-third of the remainder shall in any event be paid to the injured employee or the employee's personal representative or other person entitled to bring action. Out of the balance remaining, the employer, insurance carrier, or, if applicable, uninsured employers fund or work injury supplemental benefit fund shall be reimbursed for all payments made by it, or which it may be obligated to make in the future, under this chapter, except that it shall not be reimbursed for any payments made or to be made under s. 102.18 (1) (bp), 102.22, 102.35 (3), 102.57, or 102.60. Any balance remaining shall be paid to the employee or the employee's personal representative or other person entitled to bring action. If both the employee or the employee's personal representative or other person entitled to bring action, and the employer, compensation insurer, or department, join in the pressing of said claim and are represented by counsel, the attorney fees allowed as a part of the costs of collection shall be, unless otherwise agreed upon,		

			divided between such attorneys as directed by the court or by the department. A settlement of any 3rd-party claim shall be void unless said settlement and the distribution of the proceeds thereof is approved by the court before whom the action is pending and if no action is pending, then by a court of record or by the department.		
3.	**102.425 (3)(a)1**	Pharmacy Fee Schedule	Amend §102.425 (3)(a)1 as follows: 1. The average wholesale price of the prescription drug as of the date on which the prescription drug is dispensed, as quoted in the ~~American Druggist Blue Book, published by Hearst Corporation, Inc. or its successor, or in the~~ Drug Topics Red Book, published by Medical Economics Company, Inc. or its successor, ~~whichever is less.~~	This amendment deletes reference to the Blue Book, which is out of print.	2/1/07 Introduced at WCAC meeting. 4/5/07 Approved by WCAC.
4.	**102.425(3) (r) and (s)**	Pharmacy fee disputes	Create §102.425 (3)(r) and (s) as follows: (r) The department has jurisdiction under this subsection to resolve a dispute between a pharmacist or practitioner and an insurer or self-insured employer over the application of reasonableness of the prescription drug charge for prescriptions provided to an injured employee who claims benefits under this chapter. The pharmacist or practitioner shall file a dispute with the department within 6 months of notice that the insurer or self-insured employer is denying full or partial payment for a prescription drug prescribed to treat the injured employee for the effects of the work injury. The department shall deny payment of a prescription drug charge that the department determines under this subsection is unreasonable. A pharmacist, practitioner, insurer or self-insured employer that are parties to a fee dispute under this subsection are bound by the department's determination under this subsection on the reasonableness of the disputed fee, unless that determination is set aside or modified by the department under s. 102.18(3) or is set aside on judicial review under s.102.23. (s) Within 30 days after a determination under this subsection, the department may set aside, reverse or modify the determination for any reason that the department considers sufficient. A pharmacist, practitioner, insurer or self-insured employer that is aggrieved by a determination of the department	These new subsections create a dispute resolution process for pharmacy fees disputes.	2/1/07 Introduced at WCAC meeting. 4/5/07 Approved by WCAC.

			under this subsection may seek judicial review of that determination in the same manner that compensation claims are reviewed under s. 102.23.		
~~5.~~	**102.48(2)**	Partial Dependency	Amend §102.48(2) as follows: **(2)** In all other cases the death benefit shall be such sum as the department shall determine to represent fairly and justly the aid to support which the dependent might reasonably have anticipated from the deceased employee but for the injury. To establish anticipation of support and dependency, it shall not be essential that the deceased employee made any contribution to support. The aggregate benefits in such case shall not exceed twice the average annual earnings of the deceased; or 4 times the contributions of the deceased to the support of such dependents during the year immediately preceding the deceased employee's death, whichever amount is the greater. In no event shall the aggregate benefits in such case exceed the amount which would accrue to a person solely and wholly dependent. Where there is more than one partial dependent the weekly benefit shall be apportioned according to their relative dependency. The term "support" as used in ss. 102.42 to 102.63 shall include contributions to the capital fund of the dependents, for their necessary comfort. Any person claiming partial dependency shall ~~file with~~ submit to the department ~~documentary~~ evidence of financial support by the deceased employee. Such ~~documentary~~ evidence ~~shall~~ may include bank statements, cancelled checks or other financial documentary evidence.	This amendment requires any person claiming death benefits for partial dependency to produce documentary evidence of dependency, rather than submitting testimony only. The WCD has had several death benefit claims compromised by the Attorney General's Office with adult children. The injured worker needs to provide support of his injury, disability or continued treatment. Therefore someone claiming support by the deceased worker should also be required to produce some type of documentation of dependency or support. Revised language presented to WCAC on 5/3/07.	2/1/07 Introduced at WCAC meeting. 4/5/07 Tabled. Labor requested redraft on language. 5/1/07 redraft language presented to WCAC.
6.	**102.64(2)**	Attorney General shall represent the state	Amend §102.64(2)as follows: **(2)** Upon request of the department of administration, the attorney general shall appear on behalf of the state in proceedings upon claims for compensation against the state. The department of justice shall represent the interests of the state in proceedings under s. 102.49, 102.59, 102.60 or 102.66. The department of justice may compromise claims in such proceedings, but the compromises are subject to review by the department of workforce development. Costs incurred by the department of justice in prosecuting or defending any claim for payment into or out of the work injury supplemental benefit fund under s. 102.65,	This amendment provides that the department of justice represents the WISBF for claims payments into the Fund for illegal employment of minors under §102.60.	2/1/07 Introduced at WCAC meeting. 4/5/07 Approved by WCAC.

			including expert witness and witness fees but not including attorney fees or attorney travel expenses for services performed under this subsection, shall be paid from the work injury supplemental benefit fund.		
7.	**102.65(3)**	Work Injury Supplemental Benefit Fund Balance	Delete §102.65(3) as follows: ~~(3) If the balance in the fund on any June 30 exceeds 3 times the amount paid out of such fund during the fiscal year ending on such date, the department shall, by order, direct an appropriate proportional reduction of the payments into such fund under ss. 102.47, 102.49 and 102.59 so that the balance in the fund will remain at 3 times the payments made in the preceding fiscal year.~~	Effective April 1, 2006, §102.65(1) was amended to provide that the WISBF was a nonlapsible fund, and restricted use of the money for Fund benefit payments. The current language in §102.65(3) is no longer necessary.	2/1/07 Introduced at WCAC meeting. 4/5/07 Approved by WCAC.
8.	**102.80(3) (ag)**	Uninsured Employers Fund	Amend §102.80(3)(ag) as follows: (ag) The secretary shall monitor the cash balance in, and incurred losses to, the uninsured employers fund using generally accepted actuarial principles. If the secretary determines that the expected ultimate losses to the uninsured employers fund on known claims ~~and on incurred, but not reported,~~ claims exceed 85% of the cash balance in the uninsured employers fund, the secretary shall consult with the council on worker's compensation. If the secretary, after consulting with the council on worker's compensation, determines that there is a reasonable likelihood that the cash balance in the uninsured employers fund may become inadequate to fund all claims under s. 102.81 (1), the secretary shall file with the secretary of administration a certificate attesting that the cash balance in the uninsured employer's fund is likely to become inadequate to fund all claims under s. 102.81 (1) and specifying a date after which no new claims under s. 102.81 (1) will be paid.	This amendment eliminates the requirement to consider incurred but not reported claims. By statute, if the Fund balance becomes 85% encumbered there is no legal liability to accept new claims (those that are incurred but not reported).	2/1/07 Introduced at WCAC meeting. 4/5/07 Approved by WCAC.
9.	**102.81(2)**	Uninsured Employers Fund	Amend §102.81(2) as follows **(2)** The department may retain an insurance carrier or insurance service organization to process, investigate and pay claims under this section and may obtain excess or stop-loss reinsurance with an insurance carrier authorized to do business in this state in an amount that the secretary determines is necessary for the sound operation of the uninsured employers fund. In cases involving	This amendment eliminates any bad faith or delayed payment penalty against the UEF's third party administrator. This is in response to the recent WI Supreme Court decision in <u>Aslakson v. Gallagher Bassett Services Inc.</u>	5/3/07 Introduced at WCAC meeting. Tabled.

			disputed claims, the department may retain an attorney to represent the interests of the uninsured employers fund and to make appearances on behalf of the uninsured employers fund in proceedings under ss. 102.16 to 102.29. Section 20.930 and all provisions of subch. IV of ch. 16, except s. 16.753, do not apply to an attorney hired under this subsection. The charges for the services retained under this subsection shall be paid from the appropriation under s. 20.445 (1) (rp). The cost of any reinsurance obtained under this subsection shall be paid from the appropriation under s. 20.445 (1) (sm). An insurance carrier or insurance service organization retained by the department under this section, shall not be liable for penalties and interest under ss. 102.18(1) (b) and (bp) and 102.22(1).		
~~10.~~	**102.03(2)**	Exclusive remedy	Amend §102.03(2) as follows: **(2)** Where such conditions exist the right to the recovery of compensation under this chapter shall be the exclusive remedy against the employer, any other employee of the same employer, ~~and~~ the worker's compensation insurance carrier, the department under s. 102.81 and the insurance carrier or insurance service organization retained by the department. This section does not limit the right of an employee to bring action against any coemployee for an assault intended to cause bodily harm, or against a coemployee for negligent operation of a motor vehicle not owned or leased by the employer, or against a coemployee of the same employer to the extent that there would be liability of a governmental unit to pay judgments against employees under a collective bargaining agreement or a local ordinance.	This amendment clarifies that the exclusive remedy for work-related injuries applies to the UEF's third party administrator. This eliminates any bad faith or delayed payment penalty against the UEF's third party administrator. This is in response to the recent WI Supreme Court decision in Aslakson v. Gallagher Bassett Services Inc.	5/3/07 Introduced at WCAC meeting. Tabled.
~~11.~~	**102.35(1)**	Payment of surcharges	Amend §102.35(1) as follows: **(1)** Every employer and every insurance company that fails to keep the records or to make the reports required by this chapter or that knowingly falsifies such records or makes false reports shall pay a work injury supplemental benefit surcharge to the state of not less than $10 nor more than $100 for each offense. The department may waive or reduce a surcharge imposed under this subsection if the employer or insurance company that violated this subsection requests a waiver or reduction of the surcharge within 45 days after the date on which notice of the	This amendment provides that surcharges are payable in 30 rather than 90 days to synchronize payments with the State's accounting system.	6/7/07 Introduced at WCAC meeting. Tabled.

			surcharge is mailed to the employer or insurance company and shows that the violation was due to mistake or an absence of information. A surcharge imposed under this subsection is due within ~~90~~ 30 days after the date on which notice of the surcharge is mailed to the employer or insurance company. Interest shall accrue on amounts that are not paid when due at the rate of 1 percent per month. All surcharges and interest payments received under this subsection shall be deposited in the fund established under s. 102.65.		
12.	**102.75(2)**	Payment of surcharges	Amend §102.75(2) as follows: **(2)** The department shall require that payments for costs and expenses for each fiscal year shall be made on such dates as the department prescribes by each licensed worker's compensation insurance carrier and employer exempted under s. 102.28 (2). Each such payment shall be a sum equal to a proportionate share of the annual costs and expenses assessed upon each carrier and employer as estimated by the department. Interest shall accrue on amounts not paid within ~~90~~ 30 days after the date prescribed by the department under this subsection at the rate of 1 percent per month. All interest payments received under this subsection shall be deposited in the fund established under s. 102.65.	This amendment provides that interest on surcharges accrued if the surcharges are not paid within 30 rather than 90 days to synchronize payments with the State's accounting system.	6/7/07 Introduced at WCAC meeting. Tabled
13.	**102.83(1)(a) 3**	Warrants	Amend §102.83(1)(a)3 as follows: 3. Except as provided herein, a~~A~~ warrant entered under subd. 2. shall be considered in all respects as a final judgment constituting a perfected lien on the uninsured employer's right, title and interest in all of the uninsured employer's real and personal property located in the county where the warrant is entered. The lien is created when the department issues a warrant under subd. 2 and shall continue until the amount owed, including interest, costs and other fees to the date of payment, is paid.	Currently, a WC collections lien is in effect for 10 years, at which time a new warrant must be issued to cover the debt and a new collection priority is set. Under the proposed law change, a WC lien will remain in effect until paid. This revision will bring WC into line with the UI collection law. Currently by statute, a UI lien will remain in effect until paid. Otherwise, the WCD loses its lien priority.	Introduced at 9/6/07 meeting. Tabled.
14.	**102.83(8)**	Personal liability	Amend §102.83(8) as follows: **(8)** Any officer or director of an uninsured employer that is a corporation and any member or manager of an uninsured employer that is a limited liability company may be found	This amendment clarifies that personal liability of officers or directors is an independent obligation and provides that the lien will remain in effect until paid.	Introduced at 9/6/07 meeting. Tabled.

			individually and jointly and severally liable for the payments, interest, costs and other fees specified in a warrant under this section if after proper proceedings for the collection of those amounts from the corporation or limited liability company, as provided in this section, the corporation or limited liability company is unable to pay those amounts to the department. The personal liability of the officers and directors of a corporation or of the members and managers of a limited liability company as provided in this subsection survives dissolution, reorganization, bankruptcy, receivership, assignment for the benefit of creditors, judicially confirmed extension or composition, or any analogous situation of the corporation or limited liability company. Such personal liability ~~and~~ shall be an independent obligation, set forth in a determination or decision issued under s. 102.82. Such personal liability is not subject to a limitation period and shall continue until the amount owed, including interest, costs and other fees to the date of payment, is paid.	This revision will bring WC into line with the UI collection law. Currently by statute, a UI lien will remain in effect until paid. Otherwise, the WCD loses its lien priority.	

2007 Management Proposals to Amend the WCA

	Statute/Rule	Topic	Proposal
1.		Construction Employer and Exclusive Remedy	No employee of a subcontractor who makes a claim for compensation may make a claim or maintain an action in tort against any prime contractor who compensates the subcontractor for the employee's services. ("Subcontractor" and "Prime Contractor" as defined in §779.14(1)(a), Wis Stats.)(Based on § 102.29(6), Wis. Stats.) An employer whose employee makes a claim for compensation shall be immune from any an action in tort by the employee or any other employer who compensates the employer for the employee's services.
2.		Medical Fee Schedule	Introduction of a fee schedule – details to follow.
3.	102.17(4)	Barred Claims	Employer/insurer to be liable for medical expenses related to prostheses, provided that before the expiration of the limitation period the worker already had the prosthesis implanted.
4.	102.555	Hearing Loss Claims	Any audiogram performed closest to the last date of employment shall be presumed to constitute better evidence of work related hearing loss when compared to any audiogram performed further from the last date of employment, regardless of whether either test is performed before or after the last date of employment.
5.	102.555	Hearing Loss Claims	Where the Department, pursuant to the rules established by the Department for measuring hearing impairment, determines that there is no practical hearing impairment, no expenses for medical treatment, evaluation, testing or hearing aids shall be compensable.
6.	102.29	Temp Worker	I. An employee of a temp agency cannot sue an employee of a different temp agency if the same employer compensates both temp agencies. II. An employee of the employer that compensates the temp agency can not sue the temp help agency.
7.	102.35(3)	Refusal to Rehire	Clarify that 102.35(3) is meant to be an anti-retaliation provision (i.e., an employer cannot terminate an employee because the employee filed a WC claim). This would require evidence of retaliatory motive.
8.	102.35(3)	Refusal to Rehire	Allow ability to engage in discovery.
9.		PTD	Presume that PTD benefits cease once an employee reaches the age of 67.

2007 Management Proposals to Amend the WCA

10.		Supplemental Benefit Fund	Eliminate payments to injured workers from the WISBF for 2nd injuries.
11.	102.66(1)	Supplemental Benefit Fund	Eliminate payments on barred and previously compromised hearing loss claims. No payments would be made on these claims.
12.		PTD	Eliminate death benefit payments for PTD's who die from non-work related causes.

State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-3093/P1
GMM:jld:pg

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

AN ACT ***to repeal*** 102.31 (2m) and 102.65 (3); ***to amend*** 102.16 (1m) (a), 102.16 (1m) (b), 102.16 (2) (a), 102.16 (2) (am), 102.16 (2m) (a), 102.16 (2m) (am), 102.16 (2m) (c), 102.16 (2m) (g), 102.16 (3), 102.18 (1) (bg) 1., 102.18 (1) (bg) 2., 102.42 (1), 102.42 (4), 102.425 (3) (a) 1., 102.425 (4) (b), 102.64 (2), 102.80 (3) (ag), 626.35 (1), 631.37 (3) and 632.98; and ***to create*** 102.16 (1m) (c), 102.18 (1) (bg) 3., 102.29 (6m), 102.315 and 102.425 (4m) of the statutes; **relating to:** making various changes in the worker's compensation law.

Analysis by the Legislative Reference Bureau

This bill makes various changes to the worker's compensation law, as administered by the Department of Workforce Development (DWD).

Employee leasing companies. Under current law, a professional employer organization or an employee leasing organization that enters into an employee leasing agreement with a client must submit to DWD, within ten working days after the effective date of the agreement, a report disclosing the identity of the client, the effective date of the agreement, and such other information as DWD prescribes and an employee leasing organization that intends to terminate an employee leasing agreement must notify DWD of that termination no later than 30 days prior to the termination date of the agreement. Currently, when an employee leasing agreement is terminated, termination of the client's coverage under the worker's compensation

insurance policy of the employee leasing organization is not effective until 30 days after the employee leasing organization has given notice of the termination of that agreement to DWD.

This bill eliminates those current requirements relating to employee leasing organizations and instead provides that a person that contracts to provide the nontemporary, ongoing employee workforce of a client under an employee leasing agreement (employee leasing company) is the employer of an employee whose services are obtained by the client under the agreement (leased employee) for purposes of worker's compensation, is liable for any worker's compensation payable to the leased employee, and may not seek or receive reimbursement from the client for any payments made as a result of that liability.

Subject to certain exceptions, the bill requires an employee leasing company to insure its worker's compensation liability by obtaining a contract of insurance under which the insurer issues separate worker's compensation policies to the employee leasing company for each of its clients that are insured by the insurer (multiple coordinated policy). A multiple coordinated policy must name both the employee leasing company and the client as named insureds and must designate either the employee leasing company or the client, but not both, as the first named insured. An insurer may issue a multiple coordinated policy for a client only if all of the employees of the client are leased employees and are covered under the policy, except that an insurer may issue a multiple coordinated policy for a client that has a workforce in which some of the employees are leased employees and some are not leased employees (divided workforce) if DWD has approved a plan under which two policies are issued to cover the employees of the client, one covering the leased employees of the client and the other covering the employees of the client who are not leased employees (divided workforce plan).

Under the bill, an employee leasing company may also insure its worker's compensation liability by obtaining a single policy in its name covering more than one client of the employee leasing company (master policy) that has been approved by the commissioner of insurance (commissioner). The commissioner may approve the issuance of a master policy if the insurer shows that it has the technological capacity and operational capability to provide to the Wisconsin Compensation Rating Bureau (bureau) certain information at the client level, including unit statistical data, information concerning proof of coverage and cancellation termination, and nonrenewal of coverage, and any other information that the bureau may require. A master policy must also establish rules governing the insurance of a divided workforce and the cancellation, termination, and nonrenewal of policies.

Regardless of whether the commissioner has approved the issuance of a master policy, the bill permits an employee leasing company to insure its worker's compensation liability with respect to a group of clients, each of which has an unmodified annual premium that is equal to or less than the threshold below which employers are not experience rated under the standards and criteria of the bureau (small clients) by obtaining a master policy in the voluntary market (as opposed to under the state mandatory risk-sharing plan, which is a plan established or approved by the commissioner under which risks that are unable to obtain coverage

in the voluntary market may obtain coverage) insuring that liability. An insurer may issue a master policy covering a group of small clients regardless of whether any of those small clients has a divided workforce. If at any time the unmodified annual premium of a small client that is covered under a master policy exceeds the threshold below which employers are not experience rated, the employee leasing company must notify the insurer and obtain coverage for the small client under a multiple coordinated policy or a master policy that has been approved by the commissioner.

In addition, the bill permits an insurer to issue a policy covering only the leased employees of a client that has a divided workforce if DWD specifically consents to a divided workforce plan. Under the bill, a client that has a divided workforce must insure its employees who are not leased employees in the voluntary market and may not insure those employees under the state mandatory risk-sharing plan, unless the leased employees of the client are covered under that mandatory plan. A client that has a divided workforce must also agree to assume full responsibility to immediately pay any worker's compensation payable as may be required by DWD should a dispute arise between two or more insurers as to liability for an injury sustained while a divided workforce plan is in effect, pending final resolution of the dispute.

For a multiple coordinated policy in which an employee leasing company is the first named insured, or in which the client is the first named insured and for which premium payments are coordinated under an employee leasing agreement, and for a master policy, the bill permits an insurer to obligate only the employee leasing company to pay premiums due for a client's coverage and prohibits an insurer from recovering any unpaid premiums due for that coverage from the client. The bill, however, does not prohibit an insurer from collecting premiums and charges due with respect to a client by means of list billing through the employee leasing company; requiring an employee leasing company to maintain a letter of credit or other form of security to ensure payment of premiums; issuing policies that have a common renewal date to all, or a class of all, clients of an employee leasing company; grouping together the clients of an employee leasing company for the purpose of offering dividend eligibility and paying dividends to those clients; applying a discount to the premium charged with respect to a client; or applying a retrospective rating option for determining the premium charged with respect to a client.

Finally, the bill provides as follows with respect to the cancellation, termination, or nonrenewal of a multiple coordinated policy or a master policy:

1. That the insureds under the policy may cancel the policy during the policy period only if both the employee leasing company and the client agree to the cancellation, the cancellation is confirmed by the employee leasing company promptly providing written confirmation of the cancellation to the client in writing or by the client agreeing to the cancellation in writing, and notice of the cancellation is provided to the insurer.

2. That the insurer may cancel, terminate, or nonrenew the policy by providing written notice of the cancellation, or nonrenewal to the insured employee leasing company, the insured client, and DWD. Cancellation or termination of a policy by an insurer during a policy period is not effective until 30 days after that notice is

provided. Nonrenewal of a policy is not effective until 60 days after that notice is provided.

3. That, if an employee leasing company that is the first named insured on the policy terminates the employee leasing agreement with a client in its entirety, the insurer may cancel or terminate the policy during the policy period by providing written notice of the cancellation or termination to the insured employee leasing company, the insured client, and DWD. Cancellation or termination of a policy by an insurer during a policy period for reason of termination of an employee leasing agreement is not effective until 30 days after that notice is provided.

4. That, if an employee leasing agreement is terminated during the policy period of a policy in which the client is the first named insured, the insurer must cancel the employee leasing company's coverage by an endorsement to the policy, and coverage of the client under the policy continues, unless the policy providing continued coverage is cancelled for failure of the client to pay premiums or for other grounds stated in the policy.

7. ***Prescription drug treatment.*** Under current law, an employer or insurer is liable for providing medicines as may be reasonably required to cure and relieve an injured employee from the effects of an injury sustained while performing services growing out of and incidental to employment. Current laws, however, limits the liability of an employer or insurer for the cost of a prescription drug dispensed for outpatient use by an injured employee to the average wholesale price of the prescription drug as quoted in the American Druggist Blue Book or the Drug Topics Red Book, whichever is less. This bill limits the liability of an employer or insurer for the cost of such a prescription drug to the average wholesale price of the prescription drug, as quoted in the Drug Topics Red Book.

Currently, if an employer denies or disputes liability for the cost of a drug prescribed to an injured employee, the pharmacist or other person licensed to prescribe and administer drugs (practitioner) who dispensed the drug may collect from the injured employee the cost of the prescription drug dispensed. This bill creates a procedure for resolving disputes between a pharmacist or practitioner and an employer or insurer over the reasonableness of the amount charged for a prescription drug dispensed for outpatient use by an injured employee.

Specifically, the bill requires an employer or insurer that disputes the reasonableness of the amount charged for a prescription drug dispensed for outpatient use by an injured employee to provide reasonable notice to the pharmacist or practitioner that the charge is being disputed. After receiving that notice, the pharmacist or practitioner may not collect the cost of the prescription drug from the injured employee and must file the dispute with DWD within six months after receiving the notice. The bill requires DWD to deny payment of a prescription drug charge that DWD determines to be unreasonable and specifies that the parties to a dispute over the reasonableness of a prescription drug charge are bound by DWD's determination unless the determination is set aside on judicial review.

Similarly, the bill also permits DWD to determine the reasonableness of the amount charged for a prescription drug dispensed for outpatient use by an injured employee in all of the following situations:

1. When confirming a compromise or stipulation in which an insurer or self-insured employer concedes liability for the cost of the prescription drug, but disputes the reasonableness of the amount charged for the prescription drug.

2. When finding after hearing that an insurer or self-insured employer is liable for the cost of the prescription drug, but that the reasonableness of the amount charged for the prescription drug is in dispute.

Christian Science treatment. Under current law, an employer is liable for providing Christian Science treatment, in lieu of medical treatment, as may be reasonably required to cure and relieve an injured employee who elects that treatment from the effects of an injury growing out of and incidental to employment, unless the employer files a written notice with DWD electing not to be liable for providing that treatment. This bill eliminates the right of an employer to elect not to be liable for providing Christian Science treatment at the option of an injured employee. The bill also provides that the liability of an employer for the cost of Christian Science treatment for an injured employee is limited to the usual and customary charge for that treatment.

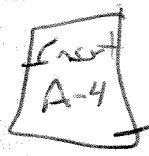
Work injury supplemental benefit fund. Under current law, there is established a work injury supplemental benefit (WISB) fund, from which DWD makes payments in lieu of worker's compensation when an otherwise meritorious claim is barred by the statute of limitations, when the status or existence of the employer or insurer cannot be determined, or when there is otherwise no adequate remedy. Current law requires an employer to pay into the state treasury for deposit in the WISB fund $20,000 when an injury results in death or in the loss of or total impairment of a hand, arm, foot, leg, or eye (death or disability payments), up to $7,500 when a minor is injured while working without a work permit, and up to $15,000 when a minor is injured while working at employment that is prohibited to the minor (illegally employed minor payments). Currently, the Department of Justice (DOJ) is required to represent the interests of the state in proceedings for death or disability payments, but not in proceedings for illegally employed minor payments. This bill requires DOJ to represent the interests of the state in proceedings for illegally employed minor payments.

Under current law, if the balance in the WISB fund on June 30 of any fiscal year exceeds three times the amount paid out of that fund during that fiscal year, DWD must reduce the death or disability payments made into that fund so that the balance in the fund will remain at three times the amounts paid out of the fund in the preceding fiscal year. This bill eliminates that requirement.

Uninsured employers. Under current law, if an employer is not insured or self-insured as required by the worker's compensation law, the employer is liable to DWD for certain payments that are deposited in an uninsured employers fund. DWD uses the uninsured employers fund to administer the laws relating to uninsured employers and to pay to the injured employees of uninsured employers benefits that are equal to the worker's compensation owed by the uninsured employers. Currently, if the secretary of workforce development determines that expected losses on known claims and on incurred, but not reported, claims, exceed 85 percent of the cash balance in the uninsured employers fund, that secretary must file a certificate

with the secretary of administration attesting that the cash balance is likely to be inadequate to fund all claims against the fund and specifying a date after which no new claims will be paid.

This bill eliminates the requirement that the secretary of workforce development consider incurred, but not reported, claims in determining whether expected losses on claims exceed 85 percent of the cash balance in the uninsured employers fund and, therefore, whether that cash balance is likely to be inadequate to fund all claims against that fund. Accordingly, under the bill, the secretary of workforce development is required to consider only expected losses on known claims in determining whether the cash balance in the uninsured employers fund is likely to be inadequate to fund all claims against that fund.



Necessity of treatment standards. Under current law, DWD is required to promulgate rules establishing standards for determining the necessity of treatment provided to an injured employee, which standards must be applied by experts in rendering opinions as to necessity of treatment and by DWD in determining necessity of treatment when there is a dispute between a health care provider and an insurer or self-insured employer over necessity of treatment. Current law requires those rules, to the greatest extent practicable, to be consistent with certain Minnesota rules, as amended to January 1, 2006. This bill eliminates the requirement that the rules establishing necessity of treatment standards be consistent with those Minnesota rules.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 102.16 (1m) (a) of the statutes is amended to read:

102.16 **(1m)** (a) If an insurer or self-insured employer concedes by compromise under sub. (1) or stipulation under s. 102.18 (1) (a) that the insurer or self-insured employer is liable under this chapter for any health services provided to an injured employee by a health service provider, but disputes the reasonableness of the fee charged by the health service provider, the department may include in its order confirming the compromise or stipulation a determination as to the reasonableness of the fee or the department may notify, or direct the insurer or self-insured employer to notify, the health service provider under sub. (2) (b) that the reasonableness of the fee is in dispute. The department shall deny payment of a health service fee that the

department determines under this paragraph to be unreasonable. A health service provider and an insurer or self-insured employer that are parties to a fee dispute under this paragraph are bound by the department's determination under this paragraph on the reasonableness of the disputed fee, unless that determination is set aside or modified by the department under sub. (1).

SECTION 2. 102.16 (1m) (b) of the statutes is amended to read:

102.16 **(1m)** (b) If an insurer or self-insured employer concedes by compromise under sub. (1) or stipulation under s. 102.18 (1) (a) that the insurer or self-insured employer is liable under this chapter for any treatment provided to an injured employee by a health service provider, but disputes the necessity of the treatment, the department may include in its order confirming the compromise or stipulation a determination as to the necessity of the treatment or the department may notify, or direct the insurer or self-insured employer to notify, the health service provider under sub. (2m) (b) that the necessity of the treatment is in dispute. ~~The department shall apply the~~ Before determining under this paragraph the necessity of treatment provided to an injured employee, the department may, but is not required to, obtain the opinion of an expert selected by the department who is qualified as provided in sub. (2m) (c). The standards promulgated under sub. (2m) (g) shall be applied by an expert in rendering an opinion as to necessity of treatment under this paragraph and by the department in determining necessity of treatment under this paragraph. In cases in which no standards promulgated under sub. (2m) (g) apply, the department shall find the facts regarding necessity of treatment. The department shall deny payment for any treatment that the department determines under this paragraph to be unnecessary. A health service provider and an insurer or self-insured employer that are parties to a dispute under this paragraph over the necessity of treatment are

bound by the department's determination under this paragraph on the necessity of the disputed treatment, unless that determination is set aside or modified by the department under sub. (1).

SECTION 3. 102.16 (1m) (c) of the statutes is created to read:

102.16 **(1m)** (c) If an insurer or self-insured employer concedes by compromise under sub. (1) or stipulation under s. 102.18 (1) (a) that the insurer or self-insured employer is liable under this chapter for the cost of a prescription drug dispensed under s. 102.425 (2) for outpatient use by an injured employee, but disputes the reasonableness of the amount charged for the prescription drug, the department may include in its order confirming the compromise or stipulation a determination as to the reasonableness of the prescription drug charge or the department may notify, or direct the insurer or self-insured employer to notify, the pharmacist or practitioner dispensing the prescription drug under s. 102.425 (4m) (b) that the reasonableness of the prescription drug charge is in dispute. The department shall deny payment of a prescription drug charge that the department determines under this paragraph to be unreasonable. A pharmacist or practitioner and an insurer or self-insured employer that are parties to a dispute under this paragraph over the reasonableness of a prescription drug charge are bound by the department's determination under this paragraph on the reasonableness of the disputed prescription drug charge, unless that determination is set aside or modified by the department under sub. (1).

SECTION 4. 102.16 (2) (a) of the statutes is amended to read:

102.16 **(2)** (a) Except as provided in this paragraph, the department has jurisdiction under this subsection, sub. (1m) (a), and s. 102.17 to resolve a dispute between a health service provider and an insurer or self-insured employer over the reasonableness of a fee charged by the health service provider for health services

provided to an injured employee who claims benefits under this chapter. A health service provider may not submit a fee dispute to the department under this subsection before all treatment by the health service provider of the employee's injury has ended if the amount in controversy, whether based on a single charge or a combination of charges for one or more days of service, is less than $25. After all treatment by a health service provider of an employee's injury has ended, the health service provider may submit any fee dispute to the department, regardless of the amount in controversy. The department shall deny payment of a health service fee that the department determines under this subsection~~, sub. (1m) (a), or s. 102.18 (1) (b)~~ to be unreasonable.

SECTION 5. 102.16 (2) (am) of the statutes is amended to read:

102.16 **(2)** (am) A health service provider and an insurer or self-insured employer that are parties to a fee dispute under this subsection are bound by the department's determination under this subsection on the reasonableness of the disputed fee, unless that determination is set aside on judicial review as provided in par. (f). ~~A health service provider and an insurer or self-insured employer that are parties to a fee dispute under sub. (1m) (a) are bound by the department's determination under sub. (1m) (a) on the reasonableness of the disputed fee, unless that determination is set aside or modified by the department under sub. (1). An insurer or self-insured employer that is a party to a fee dispute under s. 102.17 and a health service provider are bound by the department's determination under s. 102.18 (1) (b) on the reasonableness of the disputed fee, unless that determination is set aside, reversed, or modified by the department under s. 102.18 (3) or by the commission under s. 102.18 (3) or (4) or is set aside on judicial review under s. 102.23.~~

SECTION 6. 102.16 (2m) (a) of the statutes is amended to read:

102.16 **(2m)** (a) Except as provided in this paragraph, the department has jurisdiction under this subsection, sub. (1m) (b), and s. 102.17 to resolve a dispute between a health service provider and an insurer or self-insured employer over the necessity of treatment provided for an injured employee who claims benefits under this chapter. A health service provider may not submit a dispute over necessity of treatment to the department under this subsection before all treatment by the health service provider of the employee's injury has ended if the amount in controversy, whether based on a single charge or a combination of charges for one or more days of service, is less than $25. After all treatment by a health service provider of an employee's injury has ended, the health service provider may submit any dispute over necessity of treatment to the department, regardless of the amount in controversy. The department shall deny payment for any treatment that the department determines under this subsection~~, sub. (1m) (b), or s. 102.18 (1) (b)~~ to be unnecessary.

SECTION 7. 102.16 (2m) (am) of the statutes is amended to read:

102.16 **(2m)** (am) A health service provider and an insurer or self-insured employer that are parties to a dispute under this subsection over the necessity of treatment are bound by the department's determination under this subsection on the necessity of ~~that~~ the disputed treatment, unless that determination is set aside on judicial review as provided in par. (e). ~~A health service provider and an insurer or self-insured employer that are parties to a dispute under sub. (1m) (b) over the necessity of treatment are bound by the department's determination under sub. (1m) (b) on the necessity of that treatment, unless that determination is set aside or modified by the department under sub. (1). An insurer or self-insured employer that is a party to a dispute under s. 102.17 over the necessity of treatment and a health~~

~~service provider are bound by the department's determination under s. 102.18 (1) (b) on the necessity of that treatment, unless that determination is set aside, reversed or modified by the department under s. 102.18 (3) or by the commission under s. 102.18 (3) or (4) or is set aside on judicial review under s. 102.23.~~

SECTION 8. 102.16 (2m) (c) of the statutes is amended to read:

102.16 **(2m)** (c) Before determining under this subsection the necessity of treatment provided for an injured employee who claims benefits under this chapter, the department shall obtain a written opinion on the necessity of the treatment in dispute from an expert selected by the department. ~~Before determining under sub. (1m) (b) or s. 102.18 (1) (bg) 2. the necessity of treatment provided for an injured employee who claims benefits under this chapter, the department may, but is not required to, obtain such an expert opinion.~~ To qualify as an expert, a person must be licensed to practice the same health care profession as the individual health service provider whose treatment is under review and must either be performing services for an impartial health care services review organization or be a member of an independent panel of experts established by the department under par. (f). The standards promulgated under par. (g) shall be applied by an expert in rendering an opinion as to necessity of treatment under this paragraph and by the department in determining necessity of treatment under this paragraph. In cases in which no standards promulgated under sub. (2m) (g) apply, the department shall find the facts regarding necessity of treatment. The department shall adopt the written opinion of the expert as the department's determination on the issues covered in the written opinion, unless the health service provider or the insurer or self-insured employer present clear and convincing written evidence that the expert's opinion is in error.

SECTION 9. 102.16 (2m) (g) of the statutes is amended to read:

102.16 **(2m)** (g) The department shall promulgate rules establishing procedures and requirements for the necessity of treatment dispute resolution process under this subsection, including rules setting the fees under par. (f) and rules establishing standards for determining the necessity of treatment provided to an injured employee. ~~The rules establishing those standards shall, to the greatest extent possible, be consistent with Minnesota rules 5221.6010 to 5221.8900, as amended to January 1, 2006.~~ Before the department may amend the rules establishing those standards, the department shall establish an advisory committee under s. 227.13 composed of health care providers providing treatment under s. 102.42 to advise the department and the council on worker's compensation on amending those rules.

SECTION 10. 102.16 (3) of the statutes is amended to read:

102.16 **(3)** No employer subject to this chapter may solicit, receive, or collect any money from an employee or any other person or make any deduction from their wages, either directly or indirectly, for the purpose of discharging any liability under this chapter or recovering premiums paid on a contract described under s. 102.31 (1) (a) or a policy described under s. 102.315 (3), (4), or (5) (a); nor may any ~~such~~ employer subject to this chapter sell to an employee or other person, or solicit or require the employee or other person to purchase, medical, chiropractic, podiatric, psychological, dental, or hospital tickets or contracts for medical, surgical, hospital, or other health care treatment ~~which~~ that is required to be furnished by that employer.

SECTION 11. 102.18 (1) (bg) 1. of the statutes is amended to read:

102.18 **(1)** (bg) 1. If the department finds under par. (b) that an insurer or self-insured employer is liable under this chapter for any health services provided to an injured employee by a health service provider, but that the reasonableness of

the fee charged by the health service provider is in dispute, the department may include in its order under par. (b) a determination as to the reasonableness of the fee or the department may notify, or direct the insurer or self-insured employer to notify, the health service provider under s. 102.16 (2) (b) that the reasonableness of the fee is in dispute. The department shall deny payment of a health service fee that the department determines under this subdivision to be unreasonable. An insurer or self-insured employer and a health service provider that are parties to a fee dispute under this subdivision are bound by the department's determination under this subdivision on the reasonableness of the disputed fee, unless that determination is set aside, reversed, or modified by the department under sub. (3) or by the commission under sub. (3) or (4) or is set aside on judicial review under s. 102.23.

SECTION 12. 102.18 (1) (bg) 2. of the statutes is amended to read:

102.18 **(1)** (bg) 2. If the department finds under par. (b) that an employer or insurance carrier is liable under this chapter for any treatment provided to an injured employee by a health service provider, but that the necessity of the treatment is in dispute, the department may include in its order under par. (b) a determination as to the necessity of the treatment or the department may notify, or direct the employer or insurance carrier to notify, the health service provider under s. 102.16 (2m) (b) that the necessity of the treatment is in dispute. ~~The department shall apply~~ ~~the~~ Before determining under this subdivision the necessity of treatment provided to an injured employee, the department may, but is not required to, obtain the opinion of an expert selected by the department who is qualified as provided in s. 102.16 (2m) (c). The standards promulgated under s. 102.16 (2m) (g) shall be applied by an expert in rendering an opinion as to necessity of treatment under this subdivision and by the department in determining necessity of treatment under this

~~paragraph~~ subdivision. In cases in which no standards promulgated under s. 102.16 (2m) (g) apply, the department shall find the facts regarding necessity of treatment. The department shall deny payment for any treatment that the department determines under this subdivision to be unnecessary. An insurer or self-insured employer and a health service provider that are parties to a dispute under this subdivision over the necessity of treatment are bound by the department's determination under this subdivision on the necessity of the disputed treatment, unless that determination is set aside, reversed, or modified by the department under sub. (3) or by the commission under sub. (3) or (4) or is set aside on judicial review under s. 102.23.

SECTION 13. 102.18 (1) (bg) 3. of the statutes is created to read:

102.18 **(1)** (bg) 3. If the department finds under par. (b) that an insurer or self-insured employer is liable under this chapter for the cost of a prescription drug dispensed under s. 102.425 (2) for outpatient use by an injured employee, but that the reasonableness of the amount charged for that prescription drug is in dispute, the department may include in its order under par. (b) a determination as to the reasonableness of the prescription drug charge or the department may notify, or direct the insurer or self-insured employer to notify, the pharmacist or practitioner dispensing the prescription drug under s. 102.425 (4m) (b) that the reasonableness of the prescription drug charge is in dispute. The department shall deny payment of a prescription drug charge that the department determines under this subdivision to be unreasonable. An insurer or self-insured employer and a pharmacist or practitioner that are parties to a dispute under this subdivision over the reasonableness of a prescription drug charge are bound by the department's determination under par. (b) on the reasonableness of the disputed prescription drug

charge, unless that determination is set aside, reversed, or modified by the department under sub. (3) or by the commission under sub. (3) or (4) or is set aside on judicial review under s. 102.23.

SECTION 14. 102.29 (6m) of the statutes is created to read:

102.29 **(6m)** No leased employee, as defined in s. 102.315 (1) (g), who makes a claim for compensation may make a claim or maintain an action in tort against the client, as defined in s. 102.315 (1) (b), that accepted the services of the leased employee.

SECTION 15. 102.31 (2m) of the statutes is repealed.

SECTION 16. 102.315 of the statutes is created to read:

102.315 Worker's compensation insurance; employee leasing companies. (1) DEFINITIONS. In this section:

(a) "Bureau" means the Wisconsin compensation rating bureau under s. 626.06.

(b) "Client" means a person that obtains all or part of its nontemporary, ongoing employee workforce through an employee leasing agreement.

(c) "Divided workforce" means a workforce in which some of the employees of a client are leased employees and some of the employees of the client are not leased employees.

(d) "Divided workforce plan" means a plan under which 2 worker's compensation insurance policies are issued to cover the employees of a client that has a divided workforce, one policy covering the leased employees of the client and one policy covering the employees of the client who are not leased employees.

(e) "Employee leasing agreement" means a written contract between an employee leasing company and a client under which the employee leasing company provides all or part of the nontemporary, ongoing employee workforce of the client.

(f) "Employee leasing company" means a person that contracts to provide the nontemporary, ongoing employee workforce of a client under a written agreement, regardless of whether the person uses the term "professional employer organization," "PEO," "staff leasing company," "registered staff leasing company," or "employee leasing company," or uses any other, similar name, as part of the person's business name or to describe the person's business. "Employee leasing company" does not include a cooperative educational service agency.

(g) "Leased employee" means a nontemporary, ongoing employee whose services are obtained by a client under an employee leasing agreement.

(h) "Master policy" means a single worker's compensation insurance policy issued by an insurer authorized to do business in this state to an employee leasing company in the name of the employee leasing company that covers more than one client of the employee leasing company.

(i) "Multiple coordinated policy" means a contract of insurance for worker's compensation under which an insurer authorized to do business in this state issues separate worker's compensation insurance policies to an employee leasing company for each client of the employee leasing company that is insured under the contract.

(j) "Small client" means a client that has an unmodified annual premium assignable to its business, including the business of all entities or organizations that are under common control or ownership with the client, that is equal to or less than the threshold below which employers are not experience rated under the standards

and criteria under ss. 626.11 and 626.12, without regard to whether the client has a divided workforce.

(2) EMPLOYEE LEASING COMPANY LIABLE. An employee leasing company is the employer of a leased employee whom the employee leasing company has placed with a client under an employee leasing agreement. An employee leasing company is liable under s. 102.03 for all compensation payable under this chapter to a leased employee, including any payments required under s. 102.16 (3), 102.18 (1) (b) or (bp), 102.22 (1), 102.35 (3), 102.57, or 102.60. Except as permitted under s. 102.29, an employee leasing company may not seek or receive reimbursement from another employer for any payments made as a result of that liability. An employee leasing company is not liable under s. 102.03 for any compensation payable under this chapter to an employee of a client who is not a leased employee.

(3) MULTIPLE COORDINATED POLICY REQUIRED. Except as provided in subs. (4) and (5) (a), an employee leasing company shall insure its liability under sub. (2) by obtaining a separate worker's compensation insurance policy for each client of the employee leasing company under a multiple coordinated policy. The policy shall name both the employee leasing company and the client as named insureds, shall indicate which named insured is the employee leasing company and which is the client, shall designate either the employee leasing company or the client, but not both, as the first named insured, and shall provide the mailing address of each named insured. Except as permitted under sub. (6), an insurer may issue a policy for a client under this subsection only if all of the employees of the client are leased employees and are covered under the policy.

(4) MASTER POLICY; APPROVAL REQUIRED. An employee leasing company may insure its liability under sub. (2) by obtaining a master policy that has been approved

by the commissioner of insurance as provided in this subsection. The commissioner of insurance may approve the issuance of a master policy if the insurer proposing to issue the master policy submits a filing to the bureau showing that the insurer has the technological capacity and operation capability to provide to the bureau information, including unit statistical data, information concerning proof of coverage and cancellation, termination, and nonrenewal of coverage, and any other information that the bureau may require, at the client level and in a format required by the bureau and the bureau submits the filing to the commissioner of insurance for approval under s. 626.13. A master policy filing under this subsection shall also establish basic manual rules governing the insurance of a divided workforce that are consistent with sub. (6) and the cancellation, termination, and nonrenewal of policies that are consistent with sub. (10). On approval by the commissioner of insurance of a master policy filing, an insurer may issue a master policy to an employee leasing company insuring the liability of the employee leasing company under sub. (2).

(5) MASTER POLICY; SMALL CLIENTS. (a) Regardless of whether a master policy has been approved under sub. (4), an employee leasing company may insure its liability under sub. (2) with respect to a group of small clients of the employee leasing company by obtaining a master policy in the voluntary market insuring that liability. The fact that an employee leasing company has a small client that is covered under a mandatory risk-sharing plan under s. 619.01 does not preclude the employee leasing company from obtaining a master policy under this paragraph so long as that small client is not covered under the master policy. An insurer may issue a master policy under this paragraph insuring in the voluntary market the liability under sub. (2) of an employee leasing company with respect to a group of small clients of the

employee leasing company regardless of whether any of those small clients has a divided workforce.

(b) Within 30 days after the effective date of an employee leasing agreement with a small client that is covered under a master policy under par. (a), the employee leasing company shall report to the department all of the following information:

1. The name and address of the small client and of each entity or organization that is under common control or ownership with the small client.

2. The number of employees initially covered under the master policy.

3. The estimated unmodified annual premium assignable to the small client's business, including the business of all entities or organizations that are under common control or ownership with the small client, without regard to whether the small client has a divided workforce, which information the small client shall report to the employee leasing company.

4. The effective date of the employee leasing agreement.

(c) Within 30 days after the effective date of coverage of a small client under a master policy under par. (a), the insurer or, if authorized by the insurer, the employee leasing company shall file proof of that coverage with the department. Coverage of a small client under a master policy becomes binding when the insurer or employee leasing company files proof of that coverage under this paragraph or provides notice of coverage to the small client, whichever occurs first. Nothing in this paragraph requires an employee leasing company or an employee of an employee leasing company to be licensed as an insurance intermediary under ch. 628.

(d) If at any time the unmodified annual premium assignable to the business of a small client that is covered under a master policy under par. (a), including the business of all entities or organizations that are under common control or ownership

with the small client, without regard to whether the small client has a divided workforce, exceeds the threshold below which employers are not experience rated under the standards and criteria under ss. 626.11 and 626.12, the employee leasing company shall notify the insurer and obtain coverage for the small client under sub. (3) or (4).

(6) DIVIDED WORKFORCE. (a) If a client notifies the department as provided under par. (b) of its intent to have a divided workforce and the department specifically consents by written order to a divided workforce plan, an insurer may issue a worker's compensation insurance policy covering only the leased employees of the client. An insurer that issues a policy covering only the leased employees of a client is not liable under s. 102.03 for any compensation payable under this chapter to an employee of the client who is not a leased employee unless the insurer also issues a policy covering that employee. A client that has a divided workforce shall insure its employees who are not leased employees in the voluntary market and may not insure those employees under the mandatory risk-sharing plan under s. 619.01 unless the leased employees of the client are covered under that plan.

(b) A client that intends to have a divided workforce shall notify the department of that intent on a form prescribed by the department that includes all of the following:

1. The names and mailing addresses of the client and the employee leasing company, the effective date of the employee leasing agreement, a description of the employees of the client who are not leased employees, and such other information as the department may require.

2. Except as provided in par. (c), evidence that the employees of the client who are not leased employees are covered in the voluntary market. That evidence shall

be in the form of a copy of the information page or declaration page of a worker's compensation insurance policy or binder evidencing placement of coverage in the voluntary market covering those employees.

3. An agreement by the client to assume full responsibility to immediately pay all compensation and other payments payable under this chapter as may be required by the department should a dispute arise between 2 or more insurers as to liability under this chapter for an injury sustained while a divided workforce plan is in effect, pending final resolution of that dispute. This subdivision does not preclude a client from insuring that responsibility in an insurer authorized to do business in this state.

(c) If the leased employees of a client are covered under a mandatory risk-sharing plan under s. 619.01, the client may, instead of providing the evidence required under par. (b) 2., provide evidence in its notification under par. (b) that both the leased employees of the client and the employees of the client who are not leased employees are covered under that mandatory risk-sharing plan. That evidence shall be in the form of a copy of the information page or declaration page of a worker's compensation insurance policy or binder evidencing placement of coverage under the mandatory risk-sharing plan covering both those leased employees and employees who are not leased employees.

(d) When the department receives a notification under par. (b), the department shall immediately provide a copy of the notification to the bureau.

(e) 1. If a client intends to terminate a divided workforce plan, the client shall notify the department of that intent on a form prescribed by the department. Termination of a divided workforce plan by a client is not effective until 10 days after notice of the termination is received by the department.

2. If an insurer cancels, terminates, or does not renew a worker's compensation insurance policy issued under a divided workforce plan that covers in the voluntary market the employees of a client who are not leased employees, the divided workforce plan is terminated on the effective date of the cancellation, termination, or nonrenewal of the policy, unless the client submits evidence under par. (c) that both the leased employees of the client and the employees of the client who are not leased employees are covered under a mandatory risk-sharing plan.

3. If an insurer cancels, terminates, or does not renew a worker's compensation insurance policy issued under a divided workforce plan that covers under the mandatory risk-sharing plan under s. 619.01 the employees of a client who are not leased employees, the divided workforce plan is terminated on the effective date of the cancellation, termination, or nonrenewal of the policy.

(7) FILING OF CONTRACTS. An insurer that provides a policy under sub. (3), (4), or (5) (a) shall file the policy as provided in s. 626.35.

(8) COVERAGE OF CERTAIN EMPLOYEES. (a) A sole proprietor, a partner, or a member of a limited liability company is not eligible for worker's compensation benefits under a policy issued under sub. (3), (4), or (5) (a) unless the sole proprietor, partner, or member elects coverage under s. 102.075 by an endorsement on the policy naming the sole proprietor, partner, or member who has so elected.

(b) An officer of a corporation is eligible for worker's compensation benefits under a policy issued under sub. (3), (4), or (5) (a), unless the officer elects under s. 102.076 not to be covered under the policy by an endorsement on the policy naming the officer who has so elected.

(c) An employee leasing company shall obtain a worker's compensation insurance policy that is separate from a policy covering the employees whom it leases

to its clients to cover the employees of the employee leasing company who are not leased employees.

(9) PREMIUMS. (a) An insurer that issues a policy under sub. (3), (4), or (5) (a) may charge a premium for coverage under that policy that complies with the applicable classifications, rules, rates, and rating plans filed with and approved by the commissioner of insurance under s. 626.13.

(b) For a policy issued under sub. (3) in which an employee leasing company is the first named insured or for a master policy issued under sub. (4) or (5) (a), an insurer may obligate only the employee leasing company to pay premiums due for a client's coverage under the policy and may not recover any unpaid premiums due for that coverage from the client.

(c) For a policy issued under sub. (3) in which a client is the first named insured and for which premium payments are coordinated under an employee leasing agreement, an insurer may obligate only the employee leasing company to pay premiums due for the client's coverage under the policy and may not recover any unpaid premiums due for that coverage from the client.

(d) This subsection does not prohibit an insurer from doing any of the following:

1. Collecting premiums or other charges due with respect to a client by means of list billing through an employee leasing company.

2. Requiring an employee leasing company to maintain a letter of credit or other form of security to ensure payment of a premium.

3. Issuing policies that have a common renewal date to all, or a class of all, clients of an employee leasing company.

4. Grouping together the clients of an employee leasing company for the purpose of offering dividend eligibility and paying dividends to those clients in compliance with s. 631.51.

5. Applying a discount to the premium charged with respect to a client as permitted by the bureau.

6. Applying a retrospective rating option for determining the premium charged with respect to a client. No insurer or employee leasing company may impose on, allocate to, or collect from a client a penalty under a retrospective rating option arrangement. This subdivision does not prohibit an insurer from requiring an employee leasing company to pay a penalty under a retrospective rating option arrangement with respect to a client of the employee leasing company.

(10) CANCELLATION, TERMINATION, AND NONRENEWAL OF POLICIES. (a) 1. A policy issued under sub. (3) in which the employee leasing company is the first named insured and a policy issued under sub. (4) or (5) (a) may be cancelled, terminated, or nonrenewed as provided in subds. 2. to 4.

2. The insureds under a policy described in subd. 1. may cancel the policy during the policy period if both the employee leasing company and the client agree to the cancellation, the cancellation is confirmed by the employee leasing company promptly providing written confirmation of the cancellation to the client or by the client agreeing to the cancellation in writing, and notice of the cancellation is provided to the insurer as required under s. 102.31 (2) (a).

3. Subject to subd. 4., an insurer may cancel, terminate, or nonrenew a policy described in subd. 1. by providing written notice of the cancellation, termination, or nonrenewal to the insured employee leasing company and to the department as required under s. 102.31 (2) (a) and by providing that notice to the insured client.

The insurer is not required to state in the notice to the insured client the facts on which the decision to cancel, terminate, or nonrenew the policy is based. Except as provided in s. 102.31 (2) (b), cancellation or termination of a policy under this subdivision for any reason other than nonrenewal is not effective until 30 days after the insurer has provided written notice of the cancellation or termination to the insured employee leasing company, the insured client, and the department. Except as provided in s. 102.31 (2) (b), nonrenewal of a policy under this subdivision is not effective until 60 days after the insurer has provided written notice of the cancellation or termination to the insured employee leasing company, the insured client, and the department.

4. If an employee leasing company terminates an employee leasing agreement with a client in its entirety, an insurer may cancel or terminate a policy described in subd. 1. covering that client during the policy period by providing written notice of the cancellation or termination to the insured employee leasing company and the department as required under s. 102.31 (2) (a) and by providing that notice to the insured client. The insurer shall state in the notice to the insured client that the policy is being cancelled or terminated due to the termination of the employee leasing agreement. Except as provided in s. 102.31 (2) (b), cancellation or termination of a policy under this subdivision is not effective until 30 days after the insurer has provided written notice of the cancellation or termination to the insured employee leasing company, the insured client, and the department.

(b) 1. A policy issued under sub. (3) in which the client is the first named insured may be cancelled, terminated, or nonrenewed as provided in subds. 2. to 4.

2. The insureds under a policy described in subd. 1. may cancel the policy during the policy period if both the employee leasing company and the client agree

to the cancellation, the cancellation is confirmed by the employee leasing company promptly providing written confirmation of the cancellation to the client or by the client agreeing to the cancellation in writing, and notice of the cancellation is provided to the insurer as required under s. 102.31 (2) (a).

3. An insurer may cancel, terminate, or nonrenew a policy described in subd. 1., including cancellation or termination of a policy providing continued coverage under subd. 4. during the policy period for failure of the client to pay a premium due or on grounds stated in the policy, by providing written notice of the cancellation, termination, or nonrenewal to the insured employee leasing company and to the department as required under s. 102.31 (2) (a) and by providing that notice to the insured client. Except as provided in s. 102.31 (2) (b), cancellation or termination of a policy under this subdivision for any reason other than nonrenewal is not effective until 30 days after the insurer has provided written notice of the cancellation or termination to the insured employee leasing company, the insured client, and the department. Except as provided in s. 102.31 (2) (b), nonrenewal of a policy under this subdivision is not effective until 60 days after the insurer has provided written notice of the cancellation or termination to the insured employee leasing company, the insured client, and the department.

4. If an employee leasing agreement is terminated during the policy period of a policy described in subd. 1., an insurer shall cancel the employee leasing company's coverage under the policy by an endorsement to the policy and coverage of the client under the policy shall continue as to all employees of the client unless the policy is cancelled or terminated as permitted under subd. 3.

SECTION 17. 102.42 (1) of the statutes is amended to read:

Insert 26-23

102.42 **(1)** TREATMENT OF EMPLOYEE. The employer shall supply such medical, surgical, chiropractic, psychological, podiatric, dental, and hospital treatment, medicines, medical and surgical supplies, crutches, artificial members, appliances, and training in the use of artificial members and appliances, or, at the option of the employee, ~~if the employer has not filed notice as provided in sub. (4),~~ Christian Science treatment in lieu of medical treatment, medicines, and medical supplies, as may be reasonably required to cure and relieve from the effects of the injury, and to attain efficient use of artificial members and appliances, and in case of the employer's neglect or refusal seasonably to do so, or in emergency until it is practicable for the employee to give notice of injury, the employer shall be liable for the reasonable expense incurred by or on behalf of the employee in providing such treatment, medicines, supplies, and training. ~~Where~~ When the employer has knowledge of the injury and the necessity for treatment, the employer's failure to tender the necessary treatment, medicines, supplies, and training constitutes such neglect or refusal. The employer shall also be liable for reasonable expense incurred by the employee for necessary treatment to cure and relieve the employee from the effects of occupational disease prior to the time that the employee knew or should have known the nature of his or her disability and its relation to employment, and as to such treatment subs. (2) and (3) shall not apply. The obligation to furnish such treatment and appliances shall continue as required to prevent further deterioration in the condition of the employee or to maintain the existing status of such condition whether or not healing is completed.

SECTION 18. 102.42 (4) of the statutes is amended to read:

102.42 **(4)** CHRISTIAN SCIENCE. ~~Any~~ The liability of an employer ~~may elect not to be subject to the provisions for~~ for the cost of Christian Science treatment provided

~~for in this section by filing written notice of such election with the department~~ to an injured employee is limited to the usual and customary charge for that treatment.

SECTION 19. 102.425 (3) (a) 1. of the statutes is amended to read:

102.425 **(3)** (a) 1. The average wholesale price of the prescription drug as of the date on which the prescription drug is dispensed, as quoted in the ~~American Druggist Blue Book, published by Hearst Corporation, Inc. or its successor, or in the~~ Drug Topics Red Book, published by Medical Economics Company, Inc. or its successor, ~~whichever is less~~.

SECTION 20. 102.425 (4) (b) of the statutes is amended to read:

102.425 **(4)** (b) If an employer or insurer denies or disputes liability for the cost of a drug prescribed to an injured employee under sub. (2), the pharmacist or practitioner who dispensed the drug may collect, or bring an action to collect, from the injured employee the cost of the prescription drug dispensed, subject to the limitations specified in sub. (3) (a). If an employer or insurer concedes liability for the cost of a drug prescribed to an injured employee under sub. (2), but disputes the reasonableness of the amount charged for the prescription drug, the employer or insurer shall provide reasonable notice under sub. (4m) (b) to the pharmacist or practitioner that the reasonableness of the amount charged is in dispute and the pharmacist or practitioner who dispensed the drug may not collect, or bring an action to collect, from the injured employee the cost of the prescription drug dispensed after receiving that notice.

SECTION 21. 102.425 (4m) of the statutes is created to read:

102.425 **(4m)** RESOLUTION OF PRESCRIPTION DRUG CHARGE DISPUTES. (a) The department has jurisdiction under this subsection and s. 102.16 (1m) (c) and s. 102.17 to resolve a dispute between a pharmacist or practitioner and an employer

or insurer over the reasonableness of the amount charged for a prescription drug dispensed under sub. (2) for outpatient use by an injured employee who claims benefits under this chapter.

(b) An employer or insurer that disputes the reasonableness of the amount charged for a prescription drug dispensed under sub. (2) for outpatient use by an injured employee or the department under sub. (4) (b) or s. 102.16 (1m) (c) or 102.18 (1) (bg) 3. shall provide reasonable notice to the pharmacist or practitioner that the charge is being disputed. After receiving reasonable notice under this paragraph or under sub. (4) (b) or s. 102.16 (1m) (c) or 102.18 (1) (bg) 1. that a prescription drug charge is being disputed, a pharmacist or practitioner may not collect the disputed charge from, or bring an action for collection of the disputed charge against, the employee who received the prescription drug.

(c) A pharmacist or practitioner that receives notice under par. (b) that the reasonableness of the amount charged for a prescription drug dispensed under sub. (2) for outpatient use by an injured employee is in dispute shall file the dispute with the department within 6 months after receiving that notice.

(d) The department shall deny payment of a prescription drug charge that the department determines under this subsection to be unreasonable. A pharmacist or practitioner and an employer or insurer that are parties to a dispute under this subsection over the reasonableness of a prescription drug charge are bound by the department's determination under this subsection on the reasonableness of the disputed charge, unless that determination is set aside on judicial review as provided in par. (e).

(e) Within 30 days after a determination under this subsection, the department may set aside, reverse, or modify the determination for any reason that the

department considers sufficient. A pharmacist, practitioner, employer, or insurer that is aggrieved by a determination of the department under this subsection may seek judicial review of that determination in the same manner that compensation claims are reviewed under s. 102.23.

SECTION 22. 102.64 (2) of the statutes is amended to read:

102.64 **(2)** Upon request of the department of administration, the attorney general shall appear on behalf of the state in proceedings upon claims for compensation against the state. The department of justice shall represent the interests of the state in proceedings under s. 102.49, 102.59, 102.60, or 102.66. The department of justice may compromise claims in ~~such~~ those proceedings, but the compromises are subject to review by the department of workforce development. Costs incurred by the department of justice in prosecuting or defending any claim for payment into or out of the work injury supplemental benefit fund under s. 102.65, including expert witness and witness fees but not including attorney fees or attorney travel expenses for services performed under this subsection, shall be paid from the work injury supplemental benefit fund.

SECTION 23. 102.65 (3) of the statutes is repealed.

SECTION 24. 102.80 (3) (ag) of the statutes is amended to read:

102.80 **(3)** (ag) The secretary shall monitor the cash balance in, and incurred losses to, the uninsured employers fund using generally accepted actuarial principles. If the secretary determines that the expected ultimate losses to the uninsured employers fund on known claims ~~and on incurred, but not reported, claims~~ exceed 85% of the cash balance in the uninsured employers fund, the secretary shall consult with the council on worker's compensation. If the secretary, after consulting with the council on worker's compensation, determines that there is a reasonable

likelihood that the cash balance in the uninsured employers fund may become inadequate to fund all claims under s. 102.81 (1), the secretary shall file with the secretary of administration a certificate attesting that the cash balance in the uninsured employer's fund is likely to become inadequate to fund all claims under s. 102.81 (1) and specifying a date after which no new claims under s. 102.81 (1) will be paid.

Insert 31-6

SECTION 25. 626.35 (1) of the statutes is amended to read:

626.35 **(1)** FILING. An insurer who provides a contract under s. 102.31 (1) (a) or a policy under s. 102.315 (3), (4), or (5) (a) shall file with the bureau a copy of the contract or policy, or other evidence of the contract or policy as designated by the bureau, not more than 60 days after the effective date of the contract or policy.

SECTION 26. 631.37 (3) of the statutes is amended to read:

631.37 **(3)** WORKER'S COMPENSATION INSURANCE. ~~Section~~ Sections 102.31 (2) ~~applies~~ and 102.315 (10) apply to the termination of worker's compensation insurance.

SECTION 27. 632.98 of the statutes is amended to read:

632.98 Worker's compensation insurance. Sections 102.31, 102.315, and 102.62 apply to worker's compensation insurance.

SECTION 28. Initial applicability.

(1) EMPLOYEE LEASING COMPANY LIABILITY.

(a) *Liability.* The treatment of sections 102.29 (6m) and 102.315 (2), (3), (4), (5), (6), and (8) of the statutes first applies to injuries occurring on the effective date of this paragraph.

(b) *Premiums.* The treatment of section 102.315 (9) of the statutes first applies to a worker's compensation insurance policy insuring liability under section 102.315

(2) of the statutes issued, or extended, modified, or renewed, on the effective date of this paragraph.

(c) *Cancellations, terminations, or nonrenewals.* The treatment of section 102.315 (10) of the statutes first applies to a worker's compensation insurance policy insuring liability under section 102.315 (2) of the statutes whose cancellation or termination date is 30 days after the effective date of this paragraph or whose nonrenewal date is 60 days after the effective date of this paragraph.

(2) PRESCRIPTION DRUG CHARGE DISPUTE RESOLUTION.

(a) *Disputes.* The treatment of sections 102.425 (4) (b) and (4m) of the statutes first applies to prescription drug, as defined in section 102.425 (1) (h) of the statutes, charge disputes submitted to department of workforce development on the effective date of this paragraph.

(b) *Orders.* The treatment of sections 102.16 (1m) (c) and 102.18 (1) (bg) 3. of the statutes first applies to orders under section 102.16 (1) or 102.18 (1) (b) of the statutes issued on the effective date of this paragraph.

(3) CHRISTIAN SCIENCE TREATMENT. The treatment of section 102.42 (1) and (4) of the statutes first applies to Christian Science treatment provided on the effective date of this subsection.

(4) ILLEGALLY EMPLOYED MINORS. The treatment of section 102.64 (2) of the statutes first applies to a proceeding under section 102.60 of the statutes commenced on the effective date of this subsection.

Insert 32-2

SECTION 29. Effective date.

(1) This act takes effect on January 1, 2008, or on the day after publication, whichever is later.

(END)

of an employee placed with or leased to the employer

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its employees ✓

SECTION ~~1.~~ 102.01 (2) (f) of the statutes is amended to read: MOVE

102.01 **(2)** (f) "Temporary help agency" means an employer ~~who places~~ that is primarily engaged in the business of placing ~~its employee~~ with or ~~leases~~ leasing its employees to another employer ~~who~~ that controls the ~~employee's~~ work activities and compensates the first employer for the employee's services, regardless of the duration of the services.

History: 1975 c. 147 ss. 7 to 13, 54; 1975 c. 200; 1979 c. 89, 278; 1981 c. 92; 1983 a. 98, 189; 1985 a. 83; 1987 a. 179; 1989 a. 64; 1995 a. 27 ss. 3737 to 3741, 9130 (4); 1995 a. 117, 417; 1997 a. 3; 1999 a. 9, 14; 2001 a. 37; 2003 a. 139.

SECTION ~~2.~~ 102.11 (1) (intro.) of the statutes is amended to read:

102.11 **(1)** (intro.) The average weekly earnings for temporary disability, permanent total disability, or death benefits for injury in each calendar year on or after January 1, 1982, shall be not less than $30 nor more than the wage rate that results in a maximum compensation rate of 110 percent of the state's average weekly earnings as determined under s. 108.05 as of June 30 of the previous year. The average weekly earnings for permanent partial disability shall be not less than $30 and, for permanent partial disability for injuries occurring on or after ~~April 1, 2006, and before January 1, 2007, not more than $378, resulting in a maximum compensation rate of $252, and, for permanent partial disability for injuries occurring on or after January 1, 2007, not more than $393, resulting in a maximum compensation rate of $262~~ the effective date of this subsection .... [revisor inserts date], and before January 1, 2009, not more than $408, resulting in a maximum compensation rate of $272, and, for permanent partial disability for injuries occurring on or after January 1, 2009, not more than $423, resulting in a maximum

compensation rate of $282. Between such limits the average weekly earnings shall be determined as follows:

History: 1971 c. 148; 1973 c. 150; 1975 c. 147; 1977 c. 195; 1979 c. 278; 1981 c. 92; 1983 a. 98; 1985 a. 83; 1987 a. 179; 1989 a. 64; 1991 a. 85; 1993 a. 81, 492; 1995 a. 117; 1997 a. 38, 253; 2001 a. 37, 107; 2005 a. 172.

SECTION 3. 102.12 of the statutes is amended to read:

102.12 Notice of injury, exception, laches. No claim for compensation may be maintained unless, within 30 days after the occurrence of the injury or within 30 days after the employee knew or ought to have known the nature of his or her disability and its relation to the employment, actual notice was received by the employer or by an officer, manager, or designated representative of an employer. If no representative has been designated by posters placed in one or more conspicuous places, then notice received by any superior is sufficient. Absence of notice does not bar recovery if it is found that the employer was not misled ~~thereby~~ by that absence. Regardless of whether notice was received, if no payment of compensation, other than medical treatment or burial expense, is made, and no application is filed with the department within 2 years ~~from~~ after the date of the injury or death, or ~~from~~ after the date on which the employee or his or her dependent knew or ought to have known of the nature of the disability and its relation to the employment, the right to compensation ~~therefor~~ is barred, except that the right to compensation is not barred if the employer knew or should have known, within the 2-year period, that the employee had sustained the injury on which the claim is based. Issuance of notice of a hearing on the department's own motion has the same effect for the purposes of this section as the filing of an application. This section does not affect any claim barred under s. 102.17 (4) (a).

History: 1983 a. 98.

SECTION 4. 102.16 (1) of the statutes is amended to read:

102.16 **(1)** Any controversy concerning compensation or a violation of sub. (3), including controversies in which the state may be a party, shall be submitted to the department in the manner and with the effect provided in this chapter. Every compromise of any claim for compensation may be reviewed and set aside, modified, or confirmed by the department within one year ~~from~~ after the date on which the compromise is filed with the department, ~~or from~~ or within one year after the date on which an award has been entered, based ~~thereon~~ on the compromise, or the department may take that action upon application made within ~~one year~~ that one-year period. Unless the word "compromise" appears in a stipulation of settlement, the settlement shall not be ~~deemed~~ considered a compromise, and further claim is not barred except as provided in s. 102.17 (4) (a) regardless of whether an award is made. The employer, insurer, or dependent under s. 102.51 (5) shall have equal rights with the employee to have review of a compromise or any other stipulation of settlement. Upon petition filed with the department, the department may set aside the award or otherwise determine the rights of the parties.

Cross Reference: Cross Reference: See also s. DWD 80.03, Wis. adm. code.**Cross Reference:**
History: 1975 c. 147, 200; 1977 c. 195; 1981 c. 92, 314; 1983 a. 98; 1985 a. 83; 1989 a. 64; 1991 a. 85; 1993 a. 81; 1995 a. 117; 1997 a. 38; 1999 a. 14, 185; 2001 a. 37; 2003 a. 144; 2005 a. 172.

(END OF INSERT)

(INSERT 12-21)

SECTION ~~5.~~ 102.17 (4) of the statutes is renumbered 102.17 (4) (a) and amended to read:

102.17 **(4)** (a) Except as provided in ~~this subsection~~ par. (b), the right of an employee, the employee's legal representative, or a dependent to proceed under this section shall not extend beyond 12 years ~~from~~ after the date of the injury or death or ~~from~~ after the date that compensation, other than treatment or burial expenses,

was last paid, or would have been last payable if no advancement were made, whichever date is latest. Payment of wages by the employer during disability or absence from work to obtain treatment shall be considered payment of compensation for the purpose of this subsection if the employer knew of the employee's condition and its alleged relation to the employment.

(b) In the case of occupational disease~~; a traumatic injury resulting in the loss or total impairment of a hand or any part of the rest of the arm proximal to the hand or of a foot or any part of the rest of the leg proximal to the foot, any loss of vision, or any permanent brain injury; or a traumatic injury causing the need for an artificial spinal disc or a total or partial knee or hip replacement~~ or a claim for compensation for the expense of repair, replacement, or other treatment relating to an artificial member that is first supplied within 12 years after the date of a traumatic injury or last payment of compensation, as described in par. (a), for a traumatic injury, whichever date is latest, there shall be no statute of limitations~~, except that benefits~~ and benefits or treatment expenses shall be paid as provided in pars. (c) and (d).

(c) Benefits or treatment expense for an occupational disease or traumatic injury becoming due ~~after~~ 12 years ~~from~~ after the date of injury or death or last payment of compensation, as described in par. (a), whichever date is latest, other than the expense of repair, replacement, or other treatment relating to an artificial member described in par. (b), shall be paid from the work injury supplemental benefit fund under s. 102.65 and in the manner provided in s. 102.66 ~~and benefits or treatment expense for a traumatic injury.~~

(d) Expenses becoming due ~~after~~ 12 years ~~from that date~~ after the date of a traumatic injury or last payment of compensation, as described in par. (a), whichever

date is latest, for the repair, replacement, or other treatment relating to an artificial member described in par. (b) shall be paid by the employer or insurer. ~~Payment of wages by the employer during disability or absence from work to obtain treatment shall be deemed payment of compensation for the purpose of this section if the employer knew of the employee's condition and its alleged relation to the employment.~~

History: 1971 c. 148; 1971 c. 213 s. 5; 1973 c. 150, 282; Sup. Ct. Order, 67 Wis. 2d 585, 774 (1975); 1975 c. 147 ss. 20, 54; 1975 c. 199, 200; 1977 c. 29, 195, 273; 1979 c. 278; 1981 c. 92, 314; 1981 c. 317 s. 2202; 1981 c. 380; 1981 c. 391 s. 211; 1985 a. 83; 1989 a. 64, 139, 359; 1991 a. 85; 1993 a. 81, 492; 1995 a. 27, 117; 1997 a. 38, 191, 237; 1999 a. 9; 2001 a. 37; 2003 a. 144; 2005 a. 172.

(END OF INSERT)

(INSERT 15-3)

SECTION ~~6.~~ 102.18 (6) of the statutes is amended to read:

102.18 **(6)** In case of disease arising out of the employment, the department may from time to time review its findings, order, or award, and make new findings, order, or award, based on the facts regarding disability or otherwise as ~~they~~ those facts may then appear. This subsection ~~shall~~ does not affect the application of the limitation in s. 102.17 (4) (a).

History: 1971 c. 148; 1973 c. 150; 1975 c. 147; 1977 c. 29, 195; 1979 c. 89, 278, 355; 1981 c. 92; 1983 a. 98; 1985 a. 83; 1987 a. 179; 1989 a. 64; 1997 a. 38; 1999 a. 14; 2001 a. 37; 2003 a. 144; 2005 a. 172.

SECTION ~~7.~~ 102.29 (6) of the statutes is renumbered 102.29 (6) (a) and amended to read:

102.29 **(6)** (a) No employee of a temporary help agency who makes a claim for compensation may make a claim or maintain an action in tort against any employer ~~who~~ that compensates the temporary help agency for the employee's services, against any other temporary help agency that is compensated by that employer for another employee's services, or against any employee of that compensating employer or of that other temporary help agency, unless the employee who makes a claim for compensation would have a right under s. 102.03 (2) to bring an action against the

employee of the compensating employer or the employee of the other temporary help agency if the employees were coemployees.

History: 1975 c. 147 ss. 24, 54; 1977 c. 195; 1979 c. 323 s. 33; 1981 c. 92; 1985 a. 83 s. 44; 1985 a. 332 s. 253; 1987 a. 179; 1989 a. 64; 1995 a. 117, 289; 1997 a. 38; 1999 a. 9, 14; 2001 a. 16, 37; 2003 a. 144; 2005 a. 96, 172, 253; 13.93 (2) (c).

SECTION 8. 102.29 (6) (b) of the statutes is created to read:

102.29 **(6)** (b) No employee of an employer that compensates a temporary help agency for another employee's services who makes a claim for compensation may make a claim or maintain an action in tort against the temporary help agency or against any employee of the temporary help agency, unless the employee who makes a claim for compensation would have a right under s. 102.03 (2) to bring an action against the employee of the temporary help agency if the employees were coemployees.

(END OF INSERT)

(INSERT 15-8)

, against any other employee leasing company, as defined in s. 102.315 (1) (f), that provides the services of another leased employee to the client, or against any employee of the client of or that other employee leasing company, unless the leased employee who makes a claim for compensation would have a right under s. 102.03 (2) to bring an action against the employee of the client or the leased employee of the other employee leasing company if the employees or leased employees were coemployees.

(b) No employee of a client who makes a claim for compensation may make a claim or maintain an action in tort against an employee leasing company that provides the services of a leased employee to the client or against any leased employee of the employee leasing company, unless the employee who makes a claim

for compensation would have a right under s. 102.03 (2) to bring an action against the leased employee if the employee and leased employee were coemployees.

SECTION 9. 102.29 (7) of the statutes is amended to read:

102.29 **(7)** No employee who is loaned by his or her employer to another employer and who makes a claim for compensation under this chapter may make a claim or maintain an action in tort against the employer who accepted the loaned employee's services or against any employee of that employer, unless the loaned employee would have a right under s. 102.03 (2) to bring an action against the employee of that employer if the loaned employee and employee were coemployees.

History: 1975 c. 147 ss. 24, 54; 1977 c. 195; 1979 c. 323 s. 33; 1981 c. 92; 1985 a. 83 s. 44; 1985 a. 332 s. 253; 1987 a. 179; 1989 a. 64; 1995 a. 117, 289; 1997 a. 38; 1999 a. 9, 14; 2001 a. 16, 37; 2003 a. 144; 2005 a. 96, 172, 253; 13.93 (2) (c).

SECTION 10. 102.29 (8) of the statutes is amended to read:

102.29 **(8)** No student of a public school, as described in s. 115.01 (1), or a private school, as defined in s. 115.001 (3r), who is named under s. 102.077 as an employee of the school district or private school for purposes of this chapter and who makes a claim for compensation under this chapter may make a claim or maintain an action in tort against the employer that provided the work training or work experience from which the claim arose or against any employee of that employer, unless the student would have a right under s. 102.03 (2) to bring an action against the employee of that employer if the student and employee were coemployees.

History: 1975 c. 147 ss. 24, 54; 1977 c. 195; 1979 c. 323 s. 33; 1981 c. 92; 1985 a. 83 s. 44; 1985 a. 332 s. 253; 1987 a. 179; 1989 a. 64; 1995 a. 117, 289; 1997 a. 38; 1999 a. 9, 14; 2001 a. 16, 37; 2003 a. 144; 2005 a. 96, 172, 253; 13.93 (2) (c).

SECTION 11. 102.29 (8m) of the statutes is amended to read:

102.29 **(8m)** No participant in a community service job under s. 49.147 (4) or a transitional placement under s. 49.147 (5) who, under s. 49.147 (4) (c) or (5) (c), is provided worker's compensation coverage by a Wisconsin works agency, as defined under s. 49.001 (9), and who makes a claim for compensation under this chapter may

make a claim or maintain an action in tort against the employer who provided the community service job or transitional placement from which the claim arose or against any employee of that employer, unless the participant would have a right under s. 102.03 (2) to bring an action against the employee of that employer if the participant and the employee were coemployees.

History: 1975 c. 147 ss. 24, 54; 1977 c. 195; 1979 c. 323 s. 33; 1981 c. 92; 1985 a. 83 s. 44; 1985 a. 332 s. 253; 1987 a. 179; 1989 a. 64; 1995 a. 117, 289; 1997 a. 38; 1999 a. 9, 14; 2001 a. 16, 37; 2003 a. 144; 2005 a. 96, 172, 253; 13.93 (2) (c).

SECTION 12. 102.29 (8r) of the statutes is amended to read:

102.29 **(8r)** No participant in a food stamp employment and training program under s. 49.13 who, under s. 49.13 (2) (d), is provided worker's compensation coverage by the department or by a Wisconsin works agency, as defined in s. 49.001 (9), and who makes a claim for compensation under this chapter may make a claim or maintain an action in tort against the employer who provided the employment and training from which the claim arose or against any employee of that employer, unless the participant would have a right under s. 102.03 (2) to bring an action against the employee of that employer if the participant and the employee were coemployees.

History: 1975 c. 147 ss. 24, 54; 1977 c. 195; 1979 c. 323 s. 33; 1981 c. 92; 1985 a. 83 s. 44; 1985 a. 332 s. 253; 1987 a. 179; 1989 a. 64; 1995 a. 117, 289; 1997 a. 38; 1999 a. 9, 14; 2001 a. 16, 37; 2003 a. 144; 2005 a. 96, 172, 253; 13.93 (2) (c).

SECTION 13. 102.29 (10) of the statutes is amended to read:

102.29 **(10)** No behavioral health provider, health care provider, pupil services provider, or substance abuse prevention provider who, under s. 250.042 (4) (b), is considered to be an employee of the state for purposes of worker's compensation coverage while providing volunteer, unpaid behavioral health services, health care services, pupil services, or substance abuse prevention services on behalf of a health care facility during a state of emergency and who makes a claim for compensation under this chapter may make a claim or bring an action in tort against the health care facility that accepted those services or against any employee of the health care

facility, unless the provider would have a right under s. 102.03 (2) to bring an action against the employee of the health care facility if the provider and employee were coemployees.

History: 1975 c. 147 ss. 24, 54; 1977 c. 195; 1979 c. 323 s. 33; 1981 c. 92; 1985 a. 83 s. 44; 1985 a. 332 s. 253; 1987 a. 179; 1989 a. 64; 1995 a. 117, 289; 1997 a. 38; 1999 a. 9, 14; 2001 a. 16, 37; 2003 a. 144; 2005 a. 96, 172, 253; 13.93 (2) (c).

(END OF INSERT)

(INSERT 26-23)

SECTION 14. 102.32 (intro.) of the statutes is renumbered 102.32 (1m) (intro.) and amended to read:

102.32 **(1m)** (intro.) In any case in which compensation payments for an injury have extended or will extend over 6 months or more ~~from~~ after the date of the injury ~~(or at any time in death benefit cases)~~ or in any case in which death benefits are payable, any party in interest may, in the discretion of the department, be discharged from, or compelled to guarantee, future compensation payments ~~as follows~~ by doing any of the following:

History: 1977 c. 195; 1979 c. 278; 1983 a. 98, 368, 538; 1991 a. 221; 1993 a. 492; 2001 a. 37; 2003 a. 144; 2005 a. 172.

SECTION 15. 102.32 (1) of the statutes is renumbered 102.32 (1m) (a) and amended to read:

102.32 **(1m)** (a) ~~By depositing~~ Depositing the present value of the total unpaid compensation upon a ~~7%~~ 5 percent interest discount basis with a credit union, savings bank, savings and loan association, bank, or trust company designated by the department~~; or~~.

History: 1977 c. 195; 1979 c. 278; 1983 a. 98, 368, 538; 1991 a. 221; 1993 a. 492; 2001 a. 37; 2003 a. 144; 2005 a. 172.

SECTION 16. 102.32 (2) of the statutes is renumbered 102.32 (1m) (b) and amended to read:

102.32 **(1m)** (b) ~~By purchasing~~ Purchasing an annuity, within the limitations provided by law, ~~in such~~ from an insurance company ~~granting annuities and~~ licensed in this state~~, as may be~~ that is designated by the department~~; or.~~

History: 1977 c. 195; 1979 c. 278; 1983 a. 98, 368, 538; 1991 a. 221; 1993 a. 492; 2001 a. 37; 2003 a. 144; 2005 a. 172.

SECTION ~~17.~~ 102.32 (3) of the statutes is renumbered 102.32 (1m) (c) and amended to read:

102.32 **(1m)** (c) ~~By making~~ Making payment in gross upon a ~~7%~~ 5 percent interest discount basis to be approved by the department~~; and.~~

History: 1977 c. 195; 1979 c. 278; 1983 a. 98, 368, 538; 1991 a. 221; 1993 a. 492; 2001 a. 37; 2003 a. 144; 2005 a. 172.

SECTION ~~18.~~ 102.32 (4) of the statutes is renumbered 102.32 (1m) (d) and amended to read:

102.32 **(1m)** (d) In cases ~~where~~ in which the time for making payments or the amounts ~~thereof~~ of payments cannot be definitely determined, ~~by~~ furnishing a bond, or other security, satisfactory to the department for the payment of compensation as may be due or become due. The acceptance of the bond, or other security, and the form and sufficiency ~~thereof~~ of the bond or other security, shall be subject to the approval of the department. If the employer or insurer is unable or fails to immediately procure the bond, then, in lieu ~~thereof~~ of procuring the bond, deposit shall be made with a credit union, savings bank, savings and loan association, bank, or trust company designated by the department, of the maximum amount that may reasonably become payable in these cases, to be determined by the department at amounts consistent with the extent of the injuries and the law. The bonds and deposits are to be reduced only to satisfy claims and withdrawn only after the claims which they are to guarantee are fully satisfied or liquidated under ~~sub. (1), (2) or (3);~~ ~~and~~ par. (a), (b), or (c).

History: 1977 c. 195; 1979 c. 278; 1983 a. 98, 368, 538; 1991 a. 221; 1993 a. 492; 2001 a. 37; 2003 a. 144; 2005 a. 172.

SECTION ~~19.~~ 102.32 (5) of the statutes is amended to read:

102.32 **(5)** Any insured employer may, within the discretion of the department, compel the insurer to discharge, or to guarantee payment of, the employer's liabilities in any case described in ~~this section~~ sub. (1m) and thereby release the employer from compensation liability in that case, but if for any reason a bond furnished or deposit made under sub. ~~(4)~~ (1m) (d) does not fully protect, the compensation insurer or insured employer, as the case may be, shall still be liable to the beneficiary of the bond or deposit.

History: 1977 c. 195; 1979 c. 278; 1983 a. 98, 368, 538; 1991 a. 221; 1993 a. 492; 2001 a. 37; 2003 a. 144; 2005 a. 172.

SECTION ~~20.~~ 21. 102.32 (6m) of the statutes is amended to read:

102.32 **(6m)** The department may direct an advance on a payment of unaccrued compensation for permanent disability or death benefits if the department determines that the advance payment is in the best interest of the injured employee or the employee's dependents. In directing the advance, the department shall give the employer or the employer's insurer an interest credit against its liability. The credit shall be computed at ~~7~~ 5 percent. An injured employee or dependent may receive no more than 3 advance payments per calendar year.

History: 1977 c. 195; 1979 c. 278; 1983 a. 98, 368, 538; 1991 a. 221; 1993 a. 492; 2001 a. 37; 2003 a. 144; 2005 a. 172.

(END OF INSERT)

(INSERT 30-4)

SECTION ~~21.~~ 22. 102.44 (1) (intro.) of the statutes is amended to read:

102.44 **(1)** (intro.) Notwithstanding any other provision of this chapter, every employee who is receiving compensation under this chapter for permanent total disability or continuous temporary total disability more than 24 months after the date of injury resulting from an injury which occurred prior to January 1, ~~1987~~ 1992, shall receive supplemental benefits which shall be payable in the first instance by the employer or the employer's insurance carrier, or in the case of benefits payable

to an employee under s. 102.66, shall be paid by the department out of the fund created under s. 102.65. These supplemental benefits shall be paid only for weeks of disability occurring after January 1, ~~1989~~ 1994, and shall continue during the period of such total disability subsequent to that date.

History: 1971 c. 148; 1973 c. 150; 1975 c. 147 ss. 33, 54, 57; 1975 c. 199; 1977 c. 195; 1979 c. 278; 1981 c. 92; 1983 a. 98; 1991 a. 85; 1995 a. 117; 2001 a. 37; 2003 a. 144; 2005 a. 172.

SECTION ~~22~~. 102.44 (1) (a) of the statutes is amended to read:

102.44 **(1)** (a) If such employee is receiving the maximum weekly benefits in effect at the time of the injury, the supplemental benefit for a week of disability occurring after ~~January 1, 2007~~ the effective date of this paragraph .... [revisor inserts date], shall be an amount which, when added to the regular benefit established for the case, shall equal ~~$338~~ $450.

History: 1971 c. 148; 1973 c. 150; 1975 c. 147 ss. 33, 54, 57; 1975 c. 199; 1977 c. 195; 1979 c. 278; 1981 c. 92; 1983 a. 98; 1991 a. 85; 1995 a. 117; 2001 a. 37; 2003 a. 144; 2005 a. 172.

SECTION ~~23~~. 102.44 (1) (b) of the statutes is amended to read:

102.44 **(1)** (b) If such employee is receiving a weekly benefit which is less than the maximum benefit which was in effect on the date of the injury, the supplemental benefit for a week of disability occurring after ~~January 1, 2007~~ the effective date of this paragraph .... [revisor inserts date], shall be an amount sufficient to bring the total weekly benefits to the same proportion of ~~$338~~ $450 as the employee's weekly benefit bears to the maximum in effect on the date of injury.

History: 1971 c. 148; 1973 c. 150; 1975 c. 147 ss. 33, 54, 57; 1975 c. 199; 1977 c. 195; 1979 c. 278; 1981 c. 92; 1983 a. 98; 1991 a. 85; 1995 a. 117; 2001 a. 37; 2003 a. 144; 2005 a. 172.

SECTION ~~24~~. 102.44 (6) (b) of the statutes is amended to read:

102.44 **(6)** (b) If, during the period set forth in s. 102.17 (4) (a) the employment relationship is terminated by the employer at the time of the injury, or by the employee because his or her physical or mental limitations prevent his or her continuing in ~~such~~ that employment, or if during ~~such~~ that period a wage loss of ~~15%~~ 15 percent

or more occurs the department may reopen any award and make a redetermination taking into account loss of earning capacity.

History: 1971 c. 148; 1973 c. 150; 1975 c. 147 ss. 33, 54, 57; 1975 c. 199; 1977 c. 195; 1979 c. 278; 1981 c. 92; 1983 a. 98; 1991 a. 85; 1995 a. 117; 2001 a. 37; 2003 a. 144; 2005 a. 172.

SECTION 25. 102.555 (1) of the statutes is renumbered 102.555 (1) (a) and amended to read:

102.555 **(1)** (a) ~~"Occupational deafness" means permanent partial or permanent total loss of hearing of one or both ears due to prolonged exposure to noise in employment.~~ "Noise" means sound capable of producing occupational deafness.

(b) "Noisy employment" means employment in the performance of which an employee is subjected to noise.

History: 1971 c. 148; 1973 c. 150; 1975 c. 147, 199, 200; 1977 c. 195; 1979 c. 278; 1981 c. 92; 1983 a. 98; 1985 a. 83; 1991 a. 85.

SECTION 26. 102.555 (1) (intro.) of the statutes is created to read:

102.555 **(1)** (intro.) In this section:

SECTION 27. 102.555 (1) (c) of the statutes is created to read:

102.555 **(1)** (c) "Occupational deafness" means permanent partial or permanent total loss of hearing of one or both ears due to prolonged exposure to noise in employment.

SECTION 28. 102.555 (12) of the statutes is created to read:

102.555 **(12)** An employer is not liable for the expense of any examination or test for hearing loss, any evaluation of such an exam or test, any medical treatment for improving or restoring hearing, or any hearing aid to relieve the effect of hearing loss unless it is determined that compensation for occupational deafness is payable under sub. (3) or (4).

(END OF INSERT)

(INSERT 30-17)

SECTION 29. 102.66 (1) of the statutes is amended to read:

102.66 **(1)** In the event that there is an otherwise meritorious claim for occupational disease or for a traumatic injury, other than a claim for the expense of repair, replacement or other treatment relating to an artificial member described in s. 102.17 (4) (b), and the claim is barred solely by the statute of limitations under s. 102.17 (4) (a), the department may, in lieu of worker's compensation benefits, direct payment from the work injury supplemental benefit fund under s. 102.65 of such compensation and such medical expenses as would otherwise be due, based on the date of injury, to or on behalf of the injured employee. The benefits shall be supplemental, to the extent of compensation liability, to any disability or medical benefits payable from any group insurance policy whose premium is paid in whole or in part by any employer, or under any federal insurance or benefit program providing disability or medical benefits. Death benefits payable under any such group policy do not limit the benefits payable under this section.

History: 1975 c. 147; 1979 c. 278; 2001 a. 37; 2005 a. 172.

SECTION 30. 102.66 (2) of the statutes is amended to read:

102.66 **(2)** In ~~the case of occupational disease~~ a case described in sub. (1), appropriate benefits may be awarded from the work injury supplemental benefit fund when the status or existence of the employer or its insurance carrier cannot be determined or when there is otherwise no adequate remedy, subject to the limitations contained in sub. (1).

History: 1975 c. 147; 1979 c. 278; 2001 a. 37; 2005 a. 172.

(END OF INSERT)

(INSERT 31-6)

SECTION 31. 102.83 (1) (a) 1. of the statutes is amended to read:

102.83 **(1)** (a) 1. If an uninsured employer or any individual who is found personally liable under sub. (8) fails to pay to the department any amount owed to the department under s. 102.82 and no proceeding for review is pending, the department or any authorized representative may issue a warrant directed to the clerk of circuit court for any county of the state.

History: 1993 a. 81; 1995 a. 117, 224; 1997 a. 35, 38.

SECTION 32. 102.83 (1) (a) 2. of the statutes is amended to read:

102.83 **(1)** (a) 2. The clerk of circuit court shall enter in the judgment and lien docket the name of the uninsured employer or the individual mentioned in the warrant and the amount of the payments, interest, costs, and other fees for which the warrant is issued and the date when the warrant is entered.

History: 1993 a. 81; 1995 a. 117, 224; 1997 a. 35, 38.

SECTION 33. 102.83 (1) (a) 3. of the statutes is amended to read:

102.83 **(1)** (a) 3. A warrant entered under subd. 2. shall be considered in all respects as a final judgment constituting a perfected lien on the ~~uninsured employer's~~ right, title, and interest of the uninsured employer or the individual in all of ~~the uninsured employer's~~ that person's real and personal property located in the county where the warrant is entered. The lien is effective when the department issues the warrant under subd. 1. and shall continue until the amount owed, including interest, costs, and other fees to the date of payment, is paid.

History: 1993 a. 81; 1995 a. 117, 224; 1997 a. 35, 38.

SECTION 34. 102.83 (1) (a) 4. of the statutes is amended to read:

102.83 **(1)** (a) 4. After the warrant is entered in the judgment and lien docket, the department or any authorized representative may file an execution with the clerk of circuit court for filing by the clerk of circuit court with the sheriff of any county where real or personal property of the uninsured employer or the individual is found, commanding the sheriff to levy upon and sell sufficient real and personal

property of the uninsured employer or individual to pay the amount stated in the warrant in the same manner as upon an execution against property issued upon the judgment of a court of record, and to return the warrant to the department and pay to it the money collected by virtue of the warrant within 60 days after receipt of the warrant.

History: 1993 a. 81; 1995 a. 117, 224; 1997 a. 35, 38.

SECTION 35. 102.83 (1) (b) of the statutes is amended to read:

102.83 **(1)** (b) The clerk of circuit court shall accept and enter the warrant in the judgment and lien docket without prepayment of any fee, but the clerk of circuit court shall submit a statement of the proper fee semiannually to the department covering the periods from January 1 to June 30 and July 1 to December 31 unless a different billing period is agreed to between the clerk and the department. The fees shall then be paid by the department, but the fees provided by s. 814.61 (5) for entering the warrants shall be added to the amount of the warrant and collected from the uninsured employer or individual when satisfaction or release is presented for entry.

History: 1993 a. 81; 1995 a. 117, 224; 1997 a. 35, 38.

SECTION 36. 102.83 (2) of the statutes is amended to read:

102.83 **(2)** The department may issue a warrant of like terms, force, and effect to any employee or other agent of the department, who may file a copy of the warrant with the clerk of circuit court of any county in the state, and thereupon the clerk of circuit court shall enter the warrant in the judgment and lien docket and the warrant shall become a lien in the same manner, and with the same force and effect, as provided in sub. (1). In the execution of the warrant, the employee or other agent shall have all the powers conferred by law upon a sheriff, but may not collect from

the uninsured employer or individual any fee or charge for the execution of the warrant in excess of the actual expenses paid in the performance of his or her duty.

History: 1993 a. 81; 1995 a. 117, 224; 1997 a. 35, 38.

SECTION 37. 102.83 (3) of the statutes is amended to read:

102.83 **(3)** If a warrant is returned not satisfied in full, the department shall have the same remedies to enforce the amount due for payments, interest, costs, and other fees as if the department had recovered judgment against the uninsured employer or individual and an execution had been returned wholly or partially not satisfied.

History: 1993 a. 81; 1995 a. 117, 224; 1997 a. 35, 38.

SECTION 38. 102.83 (4) of the statutes is amended to read:

102.83 **(4)** When the payments, interest, costs, and other fees specified in a warrant have been paid to the department, the department shall issue a satisfaction of the warrant and file it with the clerk of circuit court. The clerk of circuit court shall immediately enter the satisfaction of the judgment in the judgment and lien docket. The department shall send a copy of the satisfaction to the uninsured employer or individual.

History: 1993 a. 81; 1995 a. 117, 224; 1997 a. 35, 38.

SECTION 39. 102.83 (8) of the statutes is amended to read:

102.83 **(8)** Any officer or director of an uninsured employer that is a corporation and any member or manager of an uninsured employer that is a limited liability company may be found individually and jointly and severally liable for the payments, interest, costs and other fees specified in a warrant under this section if after proper proceedings for the collection of those amounts from the corporation or limited liability company, as provided in this section, the corporation or limited liability company is unable to pay those amounts to the department. The personal liability of the officers and directors of a corporation or of the members and managers of a

limited liability company as provided in this subsection is an independent obligation, survives dissolution, reorganization, bankruptcy, receivership, assignment for the benefit of creditors, judicially confirmed extension or composition, or any analogous situation of the corporation or limited liability company, and shall be set forth in a determination or decision issued under s. 102.82.

History: 1993 a. 81; 1995 a. 117, 224; 1997 a. 35, 38.

SECTION 40. 102.835 (1) (ad) of the statutes is created to read:

102.835 **(1)** (ad) "Debtor" means an uninsured employer or an individual found personally liable under s. 102.83 (8) who owes the department a debt.

SECTION 41. 102.835 (2) of the statutes is amended to read:

102.835 **(2)** POWERS OF LEVY AND DISTRAINT. If any ~~uninsured employer~~ debtor who is liable for any debt fails to pay that debt after the department has made demand for payment, the department may collect that debt and the expenses of the levy by levy upon any property belonging to the ~~uninsured employer~~ debtor. If the value of any property that has been levied upon under this section is not sufficient to satisfy the claim of the department, the department may levy upon any additional property of the ~~uninsured employer~~ debtor until the debt and expenses of the levy are fully paid.

History: 1993 a. 81; 1995 a. 117; 1997 a. 187, 283; 2001 a. 109; 2005 a. 442.

SECTION 42. 102.835 (4) (a) of the statutes is amended to read:

102.835 **(4)** (a) Any ~~uninsured employer~~ debtor who fails to surrender any property or rights to property that is subject to levy, upon demand by the department, is subject to proceedings to enforce the amount of the levy.

History: 1993 a. 81; 1995 a. 117; 1997 a. 187, 283; 2001 a. 109; 2005 a. 442.

SECTION 43. 102.835 (4) (c) of the statutes is amended to read:

102.835 **(4)** (c) When a 3rd party surrenders the property or rights to the property on demand of the department or discharges the obligation to the

department for which the levy is made, the 3rd party is discharged from any obligation or liability to the ~~uninsured employer~~ debtor with respect to the property or rights to the property arising from the surrender or payment to the department.

History: 1993 a. 81; 1995 a. 117; 1997 a. 187, 283; 2001 a. 109; 2005 a. 442.

SECTION 44. 102.835 (5) (a) of the statutes is amended to read:

102.835 **(5)** (a) If the department has levied upon property, any person, other than the ~~uninsured employer~~ debtor who is liable to pay the debt out of which the levy arose, who claims an interest in or lien on that property, and who claims that that property was wrongfully levied upon may bring a civil action against the state in the circuit court for Dane County. That action may be brought whether or not that property has been surrendered to the department. The court may grant only the relief under par. (b). No other action to question the validity of or to restrain or enjoin a levy by the department may be maintained.

History: 1993 a. 81; 1995 a. 117; 1997 a. 187, 283; 2001 a. 109; 2005 a. 442.

SECTION 45. 102.835 (7) (a) of the statutes is amended to read:

102.835 **(7)** (a) The department shall apply all money obtained under this section first against the expenses of the proceedings and then against the liability in respect to which the levy was made and any other liability owed to the department by the ~~uninsured employer~~ debtor.

History: 1993 a. 81; 1995 a. 117; 1997 a. 187, 283; 2001 a. 109; 2005 a. 442.

SECTION 46. 102.835 (12) of the statutes is amended to read:

102.835 **(12)** NOTICE BEFORE LEVY. If no proceeding for review permitted by law is pending, the department shall make a demand to the ~~uninsured employer~~ debtor for payment of the debt which is subject to levy and give notice that the department may pursue legal action for collection of the debt against the ~~uninsured employer~~ debtor. The department shall make the demand for payment and give the notice at least 10 days prior to the levy, personally or by any type of mail service which requires

a signature of acceptance, at the address of the ~~uninsured employer~~ debtor as it appears on the records of the department. The demand for payment and notice shall include a statement of the amount of the debt, including costs and fees, and the name of the ~~uninsured employer~~ debtor who is liable for the debt. The ~~uninsured employer's~~ debtor's failure to accept or receive the notice does not prevent the department from making the levy. Notice prior to levy is not required for a subsequent levy on any debt of the same ~~uninsured employer~~ debtor within one year after the date of service of the original levy.

History: 1993 a. 81; 1995 a. 117; 1997 a. 187, 283; 2001 a. 109; 2005 a. 442.

SECTION 47. 102.835 (13) (a) of the statutes is amended to read:

102.835 **(13)** (a) The department shall serve the levy upon the ~~uninsured employer~~ debtor and 3rd party by personal service or by any type of mail service which requires a signature of acceptance.

History: 1993 a. 81; 1995 a. 117; 1997 a. 187, 283; 2001 a. 109; 2005 a. 442.

SECTION 48. 102.835 (13) (b) of the statutes is amended to read:

102.835 **(13)** (b) Personal service shall be made upon an individual, other than a minor or incapacitated person, by delivering a copy of the levy to the ~~uninsured employer~~ debtor or 3rd party personally; by leaving a copy of the levy at the ~~uninsured employer's~~ debtor's dwelling or usual place of abode with some person of suitable age and discretion residing there; by leaving a copy of the levy at the business establishment of the ~~uninsured employer~~ debtor with an officer or employee of the ~~uninsured employer~~ debtor; or by delivering a copy of the levy to an agent authorized by law to receive service of process.

History: 1993 a. 81; 1995 a. 117; 1997 a. 187, 283; 2001 a. 109; 2005 a. 442.

SECTION 49. 102.835 (13) (d) of the statutes is amended to read:

102.835 **(13)** (d) The ~~uninsured employer's or 3rd party's~~ failure of a debtor or 3rd party to accept or receive service of the levy does not invalidate the levy.

History: 1993 a. 81; 1995 a. 117; 1997 a. 187, 283; 2001 a. 109; 2005 a. 442.

SECTION 50. 102.835 (14) of the statutes is amended to read:

102.835 **(14)** ANSWER BY 3RD PARTY. Within 20 days after the service of the levy upon a 3rd party, the 3rd party shall file an answer with the department stating whether the 3rd party is in possession of or obligated with respect to property or rights to property of the ~~uninsured employer~~ debtor, including a description of the property or the rights to property and the nature and dollar amount of any such obligation. If the 3rd party is an insurance company, the insurance company shall file an answer with the department within 45 days after the service of the levy.

History: 1993 a. 81; 1995 a. 117; 1997 a. 187, 283; 2001 a. 109; 2005 a. 442.

SECTION 51. 102.835 (19) of the statutes is amended to read:

102.835 **(19)** HEARING. Any ~~uninsured employer~~ debtor who is subject to a levy proceeding made by the department may request a hearing under s. 102.17 to review the levy proceeding. The hearing is limited to questions of prior payment of the debt that the department is proceeding against, and mistaken identity of the ~~uninsured employer~~ debtor. The levy is not stayed pending the hearing in any case in which property is secured through the levy.

History: 1993 a. 81; 1995 a. 117; 1997 a. 187, 283; 2001 a. 109; 2005 a. 442.

(END OF INSERT)

(INSERT 32-31)

INIT APP

(5) TRAUMATIC INJURIES' ARTIFICIAL MEMBERS. The treatment of sections 102.12, 102.16 (1), 102.17 (4), 102.18 (6), 102.44 (6) (b), and 102.66 (1) and (2) of the statutes first applies to benefits and treatment expenses that are payable on the effective date of this subsection, regardless of the date of injury.

(6) THIRD-PARTY LIABILITY. The treatment of sections 102.01 (2) (f) and 102.29 (7), (8), (8m), (8r), and (10) of the statutes, the renumbering and amendment of section 102.29 (6) of the statutes, and the creation of section 102.29 (6) (b) of the statutes first apply to injuries occurring on the effective date of this subsection.

(7) INTEREST CREDIT. The treatment of section 102.32 (intro.), (1), (2), (3), (4), (5), and (6m) of the statutes first applies to a party that is discharged from or compelled to guarantee future compensation payments or that is directed to make an advance payment of compensation on the effective date of this subsection.

(8) OCCUPATIONAL DEAFNESS. The treatment of section 102.555 (12) of the statutes first applies to an examination or test for hearing loss, an evaluation of such an exam or test, medical treatment for improving or restoring hearing, or a hearing aid to relieve the effect of hearing loss that is provided on the effective date of this subsection.

(5) FOR UNINSURED EMPLOYER PAYMENTS

(9) ~~UNINSURED EMPLOYERS~~ LIENS. The treatment of section 102.83 (1) (a) 3. of the statutes first applies to a lien under that subdivision that takes effect on the effective date of this subsection.

(END OF INSERT)

(INSERT A-1)

Third-party liability. Under current law, worker's compensation is the exclusive remedy for an employee who is injured while performing services growing out of and incidental to his or her employment, except that, subject to certain exceptions, an injured employee may claim worker's compensation from his or her employer and bring an action in tort against a third party for damages by reason of the injury. Current law, provides, however, that an employee of a temporary help agency who makes a claim for worker's compensation may not make a claim or bring an action in tort against any employer who compensates the temporary help agency for the employee's services.

Recently, in *Warr v. QPS Companies, Inc.*, 2007 WI App 14, 298 Wis. 2d 440, the court of appeals held that the exclusive remedy provision of the worker's

compensation law did not bar an employee of a temporary help agency who was injured by the conduct of an employee of another temporary help agency who was placed with the same employer from bringing an action in tort against the temporary agency employing the latter employee.

This bill prohibits an employee of a temporary help agency who makes a claim for worker's compensation against the temporary help agency from making a claim or bringing an action in tort against any other temporary help agency that is compensated for another employee's services by the same employer that compensates the temporary help agency for the employee's services or against any employee of the compensating employer of or that other temporary help agency. Similarly, the bill also prohibits an employee who makes a claim for worker's compensation against an employer that compensates a temporary help agency for another's employee's services from making a claim or bringing an action in tort against the temporary help agency or against any employee of the temporary help agency.

In addition, the bill narrows the definition of "temporary help agency" for purposes of the worker's compensation law. Specifically, under current law, a temporary help agency is defined as an employer who places its employee with or leases its employees to another employer who controls the employee's work activities and compensates the first employer for the employee's services, regardless of the duration of the services. This bill defines a temporary help agency as an employer that is *primarily engaged in the business* of placing or leasing its employees under those conditions.

(END OF INSERT)

(INSERT A-2)

Maximum compensation amounts

Maximum weekly compensation for permanent partial disability. Under current law, permanent partial disability benefits are subject to maximum weekly compensation rates specified in statute. Currently, the maximum weekly compensation rate for permanent partial disability is $262. This bill increases that maximum weekly compensation rate to $272 for injuries occurring before January 1, 2009, and to $282 for injuries occurring on or after that date.

Supplemental benefits. Under current law, an injured employee who is receiving the maximum weekly benefit in effect at the time of the injury for permanent total disability or continuous temporary total disability resulting from an injury that occurred before January 1, 1987, is entitled to receive supplemental benefits in an amount that, when added to the employee's regular benefits, equals $338. This bill makes an employee who is injured prior to January 1, 1992, eligible for those supplemental benefits beginning on the effective date of the bill. The bill also increases the maximum supplemental benefit amount for a week of disability occurring after the effective date of the bill to an amount that, when added to the employee's regular benefits, equals $450.

Work injury supplemental benefit fund

Traumatic injuries. Under current law, an application for compensation that is not filed within 12 years from the date of the injury or from the date that compensation, other than treatment expenses, was last paid, whichever is later, is barred by the statute of limitations, except that in cases of occupational disease or in cases of traumatic injury resulting in the loss or total impairment of a hand or any part of the rest of the arm proximal to, that is, toward the trunk from, the hand or of a foot or any part of the rest of the leg proximal to the foot, any loss of vision, any permanent brain injury, or any injury causing the need for an artificial spinal disc or a total or partial knee or hip replacement (traumatic injury) there is no statute of limitations.

In cases in which there is no statute of limitations, benefits or treatment expenses for an occupational disease becoming due 12 years after the date of the injury or after the date that compensation was last paid, whichever is later, are paid not by the employer or insurer, but rather by DWD from the work injury supplemental benefit (WISB) fund, which is a fund that is used to pay compensation when an otherwise meritorious claim is barred by the statute of limitations, when the status or existence of the employer or insurer cannot be determined, or when there is otherwise no adequate remedy, and benefits or treatment expenses for a traumatic injury becoming due 12 years after that date are paid by the employer or insurer.

This bill eliminates current law exempting traumatic injuries from the statute of limitations and provides instead that there is no statute of limitations for a claim for worker's compensation for the expense of repair, replacement, or other treatment relating to an artificial member that is first supplied within 12 years after the date of a traumatic injury or last payment of compensation for a traumatic injury, whichever is later. Under the bill, benefits or treatment expenses for a traumatic injury becoming due 12 years after that date, other than expenses relating to an artificial member that is first supplied within 12 years after that date, are paid by DWD from the WISB fund and expenses becoming due 12 years after that date relating to an artificial member that is first supplied within 12 years after that date are paid by the employer or insurer.

Illegally employed minors.

(END OF INSERT)

(INSERT A-3)

Payment of benefits

Interest credit. Under current law, if worker's compensation payments extend over a period of six months or more from the date of injury, or if payments are for a death benefit, DWD may discharge a party from or compel a party to guarantee the payments in several ways. Two ways for a party to discharge or guarantee payments are by depositing the present value of the total unpaid compensation upon a seven percent interest discount basis with a bank, credit union, savings and loan

association, or trust company designated by DWD or by making payment in gross upon a seven percent interest discount basis as approved by DWD. This bill lowers the required interest discount basis from seven percent to five percent.

Under current law, DWD may direct an employer or insurer to pay unaccrued compensation for permanent disability or death benefits to an injured employee or the employee's dependents in advance if DWD determines that the advance payment is in the best interest of the injured employee or the employee's dependents. In directing the advance, DWD must give the employer or insurer a seven percent interest credit against its liability. This bill lowers the required interest credit from seven percent to five percent.

Occupational deafness. Under current law, worker's compensation is payable for occupational deafness, which is defined as permanent partial or permanent total loss of hearing of one or both ears due to prolonged exposure to noise in employment. Under current DWD rules, an employee must have a hearing loss of more than 30 decibels in order to receive permanent partial disability payments for occupational deafness. This bill provides that an employer is not liable for the expense of any examination or test for hearing loss, any evaluation of such an examination or test, any medical treatment for improving or restoring hearing, or any hearing aid to relieve the effects of hearing loss unless it is determined that worker's compensation for occupational deafness is payable.

Uninsured employers fund

Adequacy of fund balance.

(END OF INSERT)

(INSERT A-4)

Collection of payments owed. Current law provides two procedures by which DWD may collect payments owed to DWD by an uninsured employer. Under the first procedure, if an uninsured employer fails to pay an amount owed to DWD and no proceeding for review is pending, DWD may issue a warrant to the clerk of circuit court of any county in the state and the clerk of circuit court dockets the warrant, which gives the warrant the effect of a final judgment constituting a perfected lien on the uninsured employer's real and personal property located in the county where the warrant is entered. Currently, a lien created by a judgment is effective for 10 years after the date of entry of the judgment. Under the 2nd procedure, if no proceeding for review is pending, DWD may levy on any personal property of the uninsured employer, after demanding payment and giving 10 days' notice of its intent to pursue legal action to collect the debt. This bill specifies that a lien for payments owed by an uninsured employer is effective when DWD issues the warrant and provides that the lien continues in effect until the amount owed, including interest, costs, and other fees to the date of payment, is paid.

Under current law, if DWD cannot collect a payment owed from an uninsured employer that is a corporation or limited liability company, then any officer, director, member, or manager of the uninsured employer may be held personally liable for that payment. This bill provides that the personal liability of those individuals is an

independent obligation, applies to those individuals the procedures under current law by which DWD may collect payments owed by an uninsured employer, and specifies that a lien on the real and personal property of an individual who is personally liable for an amount owed by an uninsured employer continues in effect until the amount owed, including interest, costs, and other fees to the date of payment, is paid.

Sub

Program administration

(END OF INSERT)

(END OF INSERTS)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3093/P2dn
GMM...../.....
WLJ

Jim:

As you review the draft, please note all of the following:

1. The draft breaks s. 102.17 (4) relating to the statute of limitations into paragraphs. Accordingly, it was also necessary to amend ss. 102.12, 102.16 (1), 102.18 (6), and 102.44 (6) (b) to conform the cross-reference to s. 102.17 (4) in those provisions.

2. The drafting instructions relating to the third-party liability of temporary help agencies call for prohibiting an injured employee of a temporary help agency from bringing an action in tort not only against another temporary help agency, but also against an employee of another temporary help agency. Accordingly, it was necessary to do all of the following:

A. Include an exception to that prohibition for a situation under s. 102.03 (2) when an employee is allowed to sue a coemployee.

B. Conform s. 102.29 (7), (8), (8m), (8r), and (10) to prohibit an injured employee from suing another employee in those scenarios as well.

3. Under modern drafting style, statutory units following an (intro.) unit should form a complete sentence when read with the (intro.) unit. In s. 102.32, subs. (1) to (4) form a complete sentence with s. 102.32 (intro.), but subs. (5) to (7) do not. Accordingly, this draft separates s. 102.32 (intro.) to (4) from s. 102.32 (5) to (7) by renumbering s. 102.32 (intro.) as s. 102.32 (1m) (intro.) and renumbering s. 102.32 (1) to (4) as s. 102.32 (1m) (a) to (d).

4. Similarly, modern drafting style calls for listing definitions in separate units in alphabetical order. Accordingly, this draft reorganizes s. 102.555 (1) relating to occupational deafness to conform that provision to modern drafting conventions.

5. The unemployment insurance (UI) law handles personal liability of an individual officer or director of a corporation by inserting "or individual" after "employing unit" in s. 108.22 (2) wherever found. Accordingly, this draft handles personal liability of an officer or director of an uninsured employer by inserting "or individual" after "uninsured employer" in s. 102.83 wherever found.

6. Similarly, the UI law uses the term "debtor" instead of "employing unit" in s. 108.225 relating to levy and garnishment, which would include a person found personally liable

as well as an employing unit. Accordingly, this bill defines "debtor" in s. 102.835 to include a person found personally liable for the debt of an uninsured employer and uses the term "debtor" rather than "uninsured employer" throughout s. 102.835.

If you have any questions about the draft or this drafter's note, please do not hesitate to contact me directly at the phone number or e-mail address listed below.

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: gordon.malaise@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3093/P2dn
GMM:wlj:rs

November 2, 2007

Jim:

As you review the draft, please note all of the following:

1. The draft breaks s. 102.17 (4), relating to the statute of limitations, into paragraphs. Accordingly, it was also necessary to amend ss. 102.12, 102.16 (1), 102.18 (6), 102.44 (6) (b), and 102.66 (1) to conform the cross-reference to s. 102.17 (4) in those provisions.

2. The drafting instructions relating to the third-party liability of temporary help agencies call for prohibiting an injured employee of a temporary help agency from bringing an action in tort not only against another temporary help agency, but also against an employee of another temporary help agency. Accordingly, it was necessary to do all of the following:

A. Include an exception to that prohibition for a situation under s. 102.03 (2) when an employee is allowed to sue a coemployee.

B. Conform s. 102.29 (7), (8), (8m), (8r), and (10) to prohibit an injured employee from suing another employee in those scenarios as well.

3. Under modern drafting style, statutory units following an (intro.) unit should form a complete sentence when read with the (intro.) unit. In s. 102.32, subs. (1) to (4) form a complete sentence with s. 102.32 (intro.), but subs. (5) to (7) do not. Accordingly, this draft separates s. 102.32 (intro.) to (4) from s. 102.32 (5) to (7) by renumbering s. 102.32 (intro.) as s. 102.32 (1m) (intro.) and renumbering s. 102.32 (1) to (4) as s. 102.32 (1m) (a) to (d).

4. Similarly, modern drafting style calls for listing definitions in separate units in alphabetical order. Accordingly, this draft reorganizes s. 102.555 (1) relating to occupational deafness to conform that provision to modern drafting conventions.

5. The unemployment insurance (UI) law handles personal liability of an individual officer or director of a corporation by inserting "or individual" after "employing unit" in s. 108.22 (2) wherever found. Accordingly, this draft handles personal liability of an officer or director of an uninsured employer by inserting "or the individual" after "uninsured employer" in s. 102.83 wherever found.

6. Similarly, the UI law uses the term "debtor" instead of "employing unit" in s. 108.225 relating to levy and garnishment, which would include a person found personally liable

as well as an employing unit. Accordingly, this bill defines "debtor" in s. 102.835 to include a person found personally liable for the debt of an uninsured employer and uses the term "debtor" rather than "uninsured employer" throughout s. 102.835.

If you have any questions about the draft or this drafter's note, please do not hesitate to contact me directly at the phone number or e-mail address listed below.

Gordon M. Malaise
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Malaise, Gordon

From: O'Malley, Jim T - DWD
Sent: Monday, November 05, 2007 12:45 PM
To: Malaise, Gordon
Subject: FW: Draft review: LRB 07-3093/P2 Topic: Worker's compensation; various changes
Attachments: LRB-3093_P2; LRB-3093_P2 Drafters_Note

The following are my requests for changes to the draft. Please let me know if you have any questions.

There is a Worker's Compensation Advisory Council Meeting on Thursday, November 8,2007. We would appreciate it very much if you could make the changes as soon as possible.

On page 2 of your analysis in the first sentence of the second paragraph we request that you delete the reference to the employee leasing company being the employer of the employee whose services are obtained by the client. We also request for you to delete the first sentence in s. 102.315 (2), lines 19-21. The reason for this is that the Worker's Compensation Advisory Council (WCAC) agreed to legislative language that specifically did not state the employee leasing company was the employer of employees leased to clients. Attorney Fred Nepple, an attorney with the Office of the Commissioner of Insurance, convinced the WCAC this language should not be used because it created problems for OCI in dealing with self-funded benefit plans established by employers. The specific problem is that an employer can establish a self-funded benefit plan that operates like a mutual insurance company, but without the financial assets required of an insurance company by OCI. Mr. Nepple provided language that stated an employee leasing company is for all compensation payable under ch. 102 to employees employed under leasing agreements. If you need more information about this I can request Fred to call you.

On page 5 of your analysis in the first full paragraph, in the sixth line, should there be an "of " after employer? ..... the compensating employer of or that other temporary help....

On page 6 of you analysis in the section on *Supplemental benefits*, in the sixth line, 1993 should be stated rather than 1992. This bill makes an employee who is injured prior to January 1, 1993 eligible for supplemental benefits. The WCAC agreed to add six (6) more years for supplemental benefits. Under current law employees with injuries thru 1986 are eligible for supplemental benefits. The WCAC agreed to include employees with injuries from 1987 thru 1992. The language used in the analysis covers only 5 more years, 1987 thru 1991. The $450 maximum weekly benefit rate applied to injuries occurring in both 1992 and 1993.

On page 10, Section 1, s. 102.01(2) (f), line 4, the leased should be used rather than licensed. I suggest, ... " of an employee placed with or leased to the employer.....". Using the term " licensed " interjects too much uncertainty. Temporary help agencies lease employee to employer-clients.

On page 12, Section 5, s.102.16 (1m) (a), the last sentence in line 25. In the last sentence the draft language provides that unless that determination is set aside or modified by the department under sub. (1). S. 102.16(1) gives the department authority to set aside, modify or confirm compromise agreements. Health care providers are only " parties " to worker's compensation cases for reasonableness of fee and necessity of treatment disputes, and not for any other claims. Stating sub. (1) could be interpreted to mean that health care providers have standing to request the department to review compromise agreements under s. 102.16 (1). I suggest that you replace sub. (1) with ".... set aside or modified as a result of judicial review under par. (f)."

On page 13, Section 6, s. 102.16 (1m) (b), the last sentence in line 23. Same comments as above. Health care providers are not parties to cases and have no standing to request the department to review compromises under s. 102.16 (1). I suggest that you replace sub. (1) with ....." set aside or modified as a result of judicial review under par. (e)."

On page 14, Section 7, s. 102.16 (1m) (c), the last sentence in line 16. Same comments as for the above two (2) paragraphs. Pharmacists are not parties to cases and have no standing to request the department to review compromise agreements under s. 102.16 (1). I suggest you replace sub. (1) with ....." set aside or modified

as a result of judicial review under s. 102.425 (4m) (e)."

On page 19,Section 15, s. 102.17 (4) (c), lines 15-21. The WCAC agreed to place liability for the specified traumatic claims, except for repair/replacement of artificial member that was first supplied within the applicable statute of limitations, back the Work Injury Supplemental Benefit Fund (WISBF). The WCAC did not agree to place liability for all traumatic injuries with the WISBF. The language used in the draft for this par. places liability for all traumatic injuries with the WISBF. I suggest the following," Benefits or treatment expense for an occupational disease or a traumatic injury resulting in the the loss or total impairment of a hand or any part of the rest of arm proximal to the hand or of a foot or any part of the rest of the leg proximal to the foot, any loss of vision, any permanent brain injury or a traumatic injury causing the need for an artificial spinal disc or a total or partial knee or hip replacement , other than the expense of repair, replacement or other treatment relating to an artificial member described in par. (b), shall be paid from the work injury supplemental benefit fund under s. 102.65 and in the manner provided in s. 102.66."

On pages 20-22,Sections 16-18,, ss. 102.18 (1) (bg) 1,1,and 3. Health care providers have standing to file dispute resolution requests for reasonableness of fee and necessity of treatment disputes. Do you think the language used in these subds. could reasonably be interpreted to give health care providers standing to appeal determinations to the Labor and Industry Review Commission under s. 102.18 (3) and (4)? To date this has not happened.

On page 26, Section 29, s. 102.315(1) (b), line 10, I suggest delete agreement and insert company. ".... through an employee leasing company."

On page 26, Section 29, s. 102.315(1) (f), Line 21, we would like you to insert after means, " for the purposes of administration of ch. 102. " Employee leasing company" means for the purposes of administration of ch. 102 a person that contracts to provide..... . There is other legislation that has been enacted or is pending that covers Professional Employer Organizations (PEOs). This suggestion is made because we do not want other legislation that the PEOs have enacted affect their liability for worker's compensation under ch. 102.

On page 27, Section29, s. 102.315 (2), the first sentence,lines 19-21. We request that you delete the first sentence. The WCAC agreed language that specifically stated the PEO or employee leasing company is the employer of the leased employee should not be used. A representative from National Association Professional Employer Organizations (NAPEO) appeared before the WCAC to argue for language that names the PEO or employee leasing company as the employer. Attorney Fred Nepple from OCI also appeared before the WCAC to argue that this language not be used. The WCAC agreed with Attorney Nepple to not use the language. Also see my earlier comments about the analysis.

On page 29, Section 29, s. 102.315 (4), line 1. We suggest changing the, " ..... governing the insurance of a divided workforce..... " to ..... " governing the issuance of insurance to a divided workforce..... ".

On page 29, Section 29, s. 102.315 (5), lines 10 and 13. We suggest that you delete small that appears just before client in these lines. Employee leasing companies may have a master policy to cover small clients that are not experienced rated from the voluntary market, and have multiple coordinated policies covering other experienced rated clients from the assigned risk pool. The experienced rated clients cannot be covered under the master policy.

On page 30, Section 29, s.102.315 (6) (a), first sentence, lines 2-3. Please delete the reference about the department specifically consents by written order to a divided workforce plan. There will be no requirement for the department to issue written orders to approve divided workforce plans. they will just give notice of divided workforce plans. " if a client notifies the department as provided under par. (b) of its intent to have a divided workforce, an insurer may issue a worker's compensation insurance policy covering only the leased employees of the client.

On page 33, Section 29, s.102.315 (8) (b), line 10. Please replace the term " eligible " with " covered ". An officer of a corporation is covered for worker's compensation benefits..... " .

On page 35, Section 29, s. 102.315 (10) (a) 2, line 10. Notice of cancellation is provided by the insurer and not to it. ".... provided by the insurer as required under s. 102.31 (2) (a).

On page 36, Section 29, s. 102.315 (10) (b) 2, line 19. Notice of cancellation is provided by the insurer and not to it. " ..... provided by the insurer as required under s. 102.31 (2) (a).

On page 36, Section 29, s.102.315 (10) (b) 3, lines 22-23. Please delete the language "... during the policy period for failure of the client to pay a premium due or on grounds stated in the policy..." This should read, " An insurer may cancel, terminate, or nonrenew a policy described in subd.1., including cancellation or termination of a policy providing continued coverage under subd.4., by providing written notice of the cancellation,.....".

On page 42, Section 41, 102.425 (4m) (e), line 20. Please add the following to this par. ," Within 60 days after a determination under this subsection, the department may set aside, reverse, or modify the determination on grounds of mistake." By adding this language this will be consistent with s. 102.16 (2) (f) and s. 102.16 (2m) (e). Sometimes mistakes are not brought to out attention for more than 30 days after the determination.

On page 43, Secrion 42, s.102.44 (1) (intro), lines 4 and 9. With the amendment supplemental benefits will be extended for six (6) additional years. In line 4 the date should be changed from January 1, 1992 to 1993. Using 1/1/92 only extends supplemental benefits five (5) years.
In line 9 the date should be changed from January 1, 1994 to 1995 to maintain the 6 year extension.

On page 44, Section 48, s.102.555 (12), lines 20-24. The Work Injury Supplemental Benefit Fund (WISBF) should also not be liable for expense of any examination or test for hearing loss, any evaluation of such an exam or test, any medical treatment for improving or restoring hearing, or any hearing aid to relieve the effect of hearing loss unless it is determined compensable under s. 102.555 (11). With the current draft language just employers are not liable. Many occupational hearing loss claims are presented to the WISBF. Under s. 102.555 (11) an employee must have more than 20 % binaural (both ears) hearing loss to receive compensation from the WISBF for occupational hearing loss.

On page 45-46, Section 54, S. 102.66 (1) the language should be changed to reflect that only occupational disease and the specified traumatic injuries listed in s. 102.17 (4) (c) are covered by the WISBF. The specified traumatic injuries are the loss or total impairment of a hand or any part of the rest of the arm proximal to the hand or of a foot or any part of the rest of the leg proximal to the foot, any loss of vision, or any permanent brain injury, or a traumatic injury causing the need for an artificial spinal disc or a total or partial knee or hip replacement that is not first supplied within 12 years after the date of traumatic injury or last payment of compensation, whichever is latest.

On page 46, Section 53, s. 102.80 (3) (ag), line 14. In drafting the amendments to s. 102.32 and s. 102.44 (6) you replaced the symbol "%" with percent. Did you want to do that in this section?

On page 53, Section 75, s.626.35 (1), lines 8-11. Both " contract " and " policy " are used in this sub. We believe these terms can be used interchangeably. Do you think there is a difference?

On page 55, Section 78, (8) Occupational Deafness. Should the effective date be the date of injury rather than the date of treatment? We believe this is a sustentative rather than a procedural provision.

Thank you for your work on this project.

From: Barman, Mike
Sent: Friday, November 02, 2007 11:51 AM
To: O'Malley, Jim
Subject: Draft review: LRB 07-3093/P2 Topic: Worker's compensation; various changes

Following is the PDF version of draft LRB 07-3093/P2 and drafter's note.